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No. 14316

United States  
Court of Appeals  
for the Ninth Circuit

JULES GARRISON, Appellant,  
vs.

WARNER BROTHERS PICTURES, INC., a  
corporation, Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern  
District of California, Central Division

FILED

NOV 22 1954

PAUL P. O'BRIEN,

CLERK



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[Clerk's Note: When deemed likely to be of important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

MORRIS LAVINE,

215 West Seventh Street,  
Los Angeles 14, California.

For Appellee:

FRESTON & FILES,

EUGENE D. WILLIAMS,

650 South Spring Street,  
Los Angeles 14, California.

[1\*]

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\*Page numbering appearing at bottom of page of original certified Transcript of Record.



In the United States District Court for the Southern District of California, Central Division

Civil No. 12479-BH

JULES GARRISON, Plaintiff,

vs.

WARNER BROTHERS PICTURES, INC., a corporation, DOE CORPORATION, ROE CORPORATION, Defendants.

## COMPLAINT FOR BREACH OF CONTRACT

Plaintiff complains and alleges:

For a First Cause of Action:

### I.

Plaintiff is now and at all times herein mentioned was a resident of the County of Los Angeles and State of California, and a citizen of the State of California and of the United States of America.

### II.

Defendants are and at all times herein mentioned were foreign corporations incorporated under the laws of states other than California. Defendant, Warner Brothers Pictures, Inc., hereinafter designated as Warner Brothers, is and at all times herein mentioned was a corporation incorporated and existing under the laws of the State of Delaware. Defendants at all times herein mentioned were engaged in the business of making and [2] producing motion pictures and in such business maintained, operated and conducted the same in

the County of Los Angeles and State of California, and at all times herein mentioned said defendants were doing business in the County of Los Angeles and State of California.

### III.

That the defendants, Doe Corporation and Roe Corporation, are the fictitious names of the defendants, whose true names are to this plaintiff unknown, and plaintiff asks that when these true names are discovered, this complaint may be amended by inserting such true names in the place and stead of such fictitious names. Wherever the word "defendants" is used in this complaint, it shall include all of the defendants individually and collectively herein sued.

### IV.

That the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand (\$3,000.00) Dollars.

### V.

That sometime prior to July 17, 1950, the defendants particularly Warner Brothers did produce, make and cause to be filmed a certain motion picture known as "The Flame and the Arrow" and which motion picture was thereafter distributed by defendants, particularly Warner Brothers, to theatres for public viewing, in the City and County of Los Angeles and elsewhere. That at all times herein mentioned the leading actor or star in said motion picture was a motion picture actor known as Burt Lancaster.

## VI.

That on or about July 17, 1950 and for some time prior thereto and thereafter, defendants, particularly Warner Brothers, their servants, agents, and employees in the course of their duties as such and on the business of said defendants, did make and publish and cause to be made and published certain offers to [3] the public by means of motion pictures, newspapers and other publications, which offers related to said motion picture "The Flame and the Arrow" and to the part played therein by said Burt Lancaster, to-wit: That said defendants, particularly Warner Brothers offered to pay the sum of \$1,000,000 to anyone who could prove that said Burt Lancaster did not do or perform all of the stunts he was shown doing or purported to perform in said motion picture.

## VII.

That plaintiff saw and read the various publications of said offer on or about July 17, 1950 and thereafter, and plaintiff in reliance thereon did gather and check evidence and proof required by said offer and plaintiff did accept said offer and plaintiff did notify defendants, particularly Warner Brothers, and defendants' attorneys of plaintiff's acceptance of said offer and plaintiff did further notify defendants that plaintiff could prove that said Burt Lancaster did not do or perform all of the stunts that he is shown doing or purports to do in said picture "The Flame and the Arrow."

## VIII.

That plaintiff pursuant to the aforesaid contract with defendants did offer proof and did submit proof to said defendants, particularly Warner Brothers, in full compliance with said offer of defendants aforesaid and at all times herein mentioned plaintiff was ready, able, and willing to submit further proof and to present further performance pursuant to said offer and acceptance of said agreement.

## IX.

That plaintiff has duly performed all of the conditions required by said contract to be performed on his part.

## X.

That pursuant to plaintiff's acceptance and performance [4] of said offer and contract, plaintiff made demand upon defendants, particularly Warner Brothers for payment of said sum of \$1,000,000 and defendants, particularly Warner Brothers, refused and still refuse to pay said sum of \$1,000,000 or any part thereof.

For a Second, Separate and Distinct Cause of Action, Plaintiff Alleges:

## I.

Plaintiff realleges and incorporates herein by reference as if fully set forth herein in haec verba all of the allegations in plaintiff's First Cause of Action aforesaid.



## II.

That if defendants should claim or allege any failure or lack of performance of said contract on the part of plaintiff, plaintiff alleges that if there be any alleged failure or lack of full performance on the part of plaintiff, such failure, if any, was excused by reason of the waiver and estoppel on the part of defendants in not requiring or requesting or accepting any further performance; that such failure, if any, was further excused by prevention of performance on the part of defendants particularly Warner Brothers; that said defendants accepted plaintiff's performance as full performance; and that defendants' conduct amounted to an anticipatory breach so that no further performance was required by plaintiff; that, in any event, plaintiff did render sufficient and full performance of the aforesaid contract.

## III.

That plaintiff is and at all times herein mentioned was ready, able and willing to submit additional proof if necessary or requested under the aforesaid contract.

Wherefore, plaintiff prays judgment against defendants [5] and each of them as follows:

1. For \$1,000,000;
2. For costs of suit;

3. For such other and further relief as the Court deems just and proper.

/s/ MORRIS L. MARCUS,  
Attorney for Plaintiff. [6]

[Endorsed]: Filed October 30, 1950.

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[Title of District Court and Cause.]

ANSWER OF DEFENDANT, WARNER BROS.  
PICTURES, INC., A CORPORATION

Comes Now the defendant, Warner Bros. Pictures, Inc., a corporation and, appearing for itself alone and not for any other defendant, answers the complaint herein as follows:

Answer to First Cause of Action

I.

In answer to Paragraph V, this defendant denies that it did produce, make or cause to be filmed that certain motion picture known as "The Flame and the Arrow," described in the complaint.

II.

In answer to Paragraph VI, defendant denies generally and specifically each and every allegation therein contained.

III.

In answer to Paragraph VII, defendant denies

generally and [7] specifically each and every allegation therein contained.

IV.

In answer to Paragraph VIII, defendant denies generally and specifically each and every allegation therein contained.

V.

In answer to Paragraph IX, defendant denies generally and specifically each and every allegation therein contained.

VI.

In answer to Paragraph X, defendant denies generally and specifically each and every allegation therein contained.

Answer to Second Cause of Action.

I.

Defendant repeats, restates and makes a part hereof each and every denial and allegation made by it in response to the First Cause of Action set forth in the complaint.

II.

Denies generally and specifically each and every allegation set forth in Paragraph II.

III.

Denies generally and specifically each and every allegation set forth in Paragraph III.

Wherefore, this answering defendant prays that

plaintiff take nothing and that it be hence dismissed with its costs.

FRESTON & FILES and  
 EUGENE D. WILLIAMS,  
 /s/ By EUGENE D. WILLIAMS,  
 Attorneys for Defendant,  
 Warner Bros. Pictures, Inc. [8]

Duly Verified. [9]

Affidavit of Service by Mail attached. [10]

[Endorsed]: Filed March 7, 1951.

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[Title of District Court and Cause.]

REQUEST FOR ANSWER TO INTERROGA-  
 TORIES DIRECTED TO WARNER BROS.  
 PICTURES, INC.

Plaintiff Jules Garrison, pursuant to Rule 33, requests Warner Bros. Pictures, Inc. by any officer thereof competent to testify in its behalf to answer fully and separately in writing under oath each of the following interrogatories, within fifteen days after delivery of the interrogatories unless the court on motion and notice and for good cause shown enlarges the time:

1. What is the name and address of the actor who appeared in the motion picture "The Flame and the Arrow" who is represented to be Burt Lancaster and who, as Dardo, ran up the ladder carrying another person represented to be the boy, Rudi?

2. What is the name and address of the actor who appeared in the motion picture "The Flame and the Arrow" who, as Rudi, is carried up the ladder by Dardo?

3. What is the name and address of the actor who appeared in the motion picture "The Flame and the Arrow" who, as Dardo, [11] ran along the edge of the roof carrying another person depicted to be the boy, Rudi?

4. What is the name and address of the actor who appeared in the motion picture "The Flame and the Arrow" who, as Rudi, was carried along the edge of the roof by Dardo?

5. What is the name and address of the actor who appeared in the motion picture "The Flame and the Arrow", who was represented and purported to be Burt Lancaster, and who, as Dardo, was shown leading a group of horsemen riding hard through a forest in the night?

6. What is the name and address of the actor who appeared in the motion picture "The Flame and the Arrow", who was represented and purported to be Burt Lancaster, and who, as Dardo, was shown driving a chariot or two wheel cart in the market place?

7. What is the name and address of the actor who appeared in the motion picture "The Flame and the Arrow", who was represented and purported to be Burt Lancaster, and who, in fact, shot the particular arrow which actually struck the Hawk, barely missing Rudi's head?

8. What is the name and address of the actor

who appeared in the motion picture "The Flame and the Arrow", who was represented and purported to be Burt Lancaster, and who, as Dardo, was in fact leading the outlaws and actually doing most of the sword fighting at the market place?

9. What are the names and latest known addresses of all stunt men used in the filming of the motion picture "The Flame and the Arrow"?

10. Which are the scenes and what parts were performed by each of the said stunt men in the filming of the motion picture "The Flame and the Arrow"?

11. What are the names and latest known addresses of each stunt man who wore the costume of Dardo in the motion picture [12] "The Flame and the Arrow" and in which scenes did each perform?

12. What are the names and latest known addresses of all wardrobe men and women and make-up men and women who handled the actor or actors who are shown in the motion picture "The Flame and the Arrow" as Dardo?

13. What are the names and latest known addresses of all actors and stunt men who were used in the "Second Unit" on the motion picture "The Flame and the Arrow"?

14. What is the function and use of a "Second Unit" on a motion picture?

15. What was the function and use of the "Second Unit" in the motion picture "The Flame and the Arrow"?

16. What are the names and latest known ad-

dresses of all the camera men and lighting personnel used in the filming of the motion picture "The Flame and the Arrow", setting forth the dates on which said personnel worked and the scenes which they lighted or filmed?

17. What are the names and latest known addresses of all "grips" and movers of equipment in the motion picture "The Flame and the Arrow"?

18. What consideration or compensation has been and will be received by defendant Warner Bros. Pictures, Inc. for its services in connection with the production or distribution of the motion picture "The Flame and the Arrow"?

19. What was the exact language of the offer made by Warner Bros. Pictures, Inc. to the effect that \$1,000,000 would be paid to anyone who could prove that Burt Lancaster did not perform all the stunts and feats of strength and skill which he is depicted as having done or purported to have done in the motion picture "The Flame and the Arrow"?

20. By means of how many media, i.e., motion picture trailers, newsreel films, newspaper advertising, radio programs, [13] etc., was said offer made, specifying particulars of each?

21. When did defendant Warner Bros. Pictures, Inc. first have knowledge of the offer described in interrogatory No. 19?

22. Did defendant Warner Bros. Pictures, Inc. at any time repudiate said offer described in interrogatory No. 19? If the answer to this interrogatory is in the affirmative, state the time, place, circumstances and manner in which said repudia-

tion was made by defendant Warner Bros. Pictures, Inc.

23. Was Burt Lancaster authorized by defendant Warner Bros. Pictures, Inc. to make the offer described in interrogatory No. 19?

24. State names and addresses of all persons who were employed directly or indirectly by defendant Warner Bros. Pictures, Inc. in connection with the advertising and publicizing of the motion picture "The Flame and the Arrow" and the offer referred to in interrogatory No. 19?

25. What are the names and latest known addresses of the wranglers who took care of the horses which were used in the motion picture "The Flame and the Arrow"?

26. What frames or scenes have been cut from the motion picture "The Flame and the Arrow" since its initial public showing?

27. What are the names and latest known addresses of the actors who substituted for Burt Lancaster as Dardo in the motion picture "The Flame and the Arrow", setting forth in detail the scenes and by which persons said substitutions were enacted.

28. What are the names and latest known addresses of all persons who appeared in the motion picture trailer in which an offer of \$1,000,000 was made in connection with the motion picture "The Flame and the Arrow"?

29. What is the connection between defendant Warner Bros. Pictures, Inc. and Warner Bros. Newsreel and/or Pathe Newsreel? [14]



30. Does Warner Bros. Pictures, Inc. own or control, or are they in any way connected with Warner Bros. Newsreel and/or Pathe Newsreel?

31. What are the names and latest known addresses of all actors who participated in the rescue of Papa Pietro from the gallows in the motion picture "The Flame and the Arrow"?

32. What is the latest known address of Don Turner?

33. What is the latest known address of Billie Curtis?

34. What are the names and latest known addresses of the expert archer or archers who shot the arrows which actually struck the places shown in the motion picture "The Flame and the Arrow"?

35. In what scenes and in what parts did Don Turner perform in the motion picture "The Flame and the Arrow"?

36. What are the names and latest known addresses of all persons who were used as doubles for Burt Lancaster in the motion picture "The Flame and the Arrow", including the name and scene of each of said impersonations?

37. What was the salary actually received by Don Turner for each day in which he worked on the motion picture "The Flame and the Arrow" setting forth opposite each date the amount received and the exact work which he did on each day?

38. What part did Duke Green perform in the motion picture "The Flame and the Arrow"?

39. What was Duke Green doing at the time

he received his injuries during the filming of the motion picture "The Flame and the Arrow"?

40. How high in fact was Burt Lancaster from the ground when he is shown doing acrobatics along the side of the castle in the motion picture "The Flame and the Arrow"?

41. Were any mechanical devices, props, wires, or men used in the pole stunts shown to be performed by Burt Lancaster in the [15] motion picture "The Flame and the Arrow"?

42. If the answer to the foregoing interrogatory No. 41 is in the affirmative, specify in detail the manner in which said mechanical devices, props, wires or men were used.

43. What was the arrangement and understanding between defendant Warner Bros. Pictures, Inc. and Burt Lancaster with respect to the offer of \$1,000,000 made by Burt Lancaster in connection with the motion picture "The Flame and the Arrow"?

44. What are the names and latest known addresses of all film editors and film cutters who worked on the motion picture "The Flame and the Arrow"?

45. Which scenes and frames were cut from the motion picture "The Flame and the Arrow" after its first public showing?

46. When were the scenes and frames cut to which reference is made in the preceding interrogatory?

47. Did defendant Warner Bros. Pictures, Inc.

in any way participate in the cuts referred to in interrogatory No. 45?

48. What are the names and latest known addresses of all of the actors shown in the cuts referred to in interrogatory No. 45?

49. Which frames and scenes in the motion picture "The Flame and the Arrow" were re-shot and substituted after the initial public showing of said motion picture?

March 23, 1951.

MORRIS L. MARCUS,

/s/ By JACOB SWARTZ

Affidavit of Service by Mail attached. [17]

[Endorsed]: Filed March 26, 1951.

—————

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS  
UNDER RULE 36

Plaintiff Jules Garrison, pursuant to Rule 36, requests defendant Warner Bros. Pictures, Inc. to make the following admissions for the purposes of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial; namely, that each of the following statements is true:

1. That the person in the motion picture "The Flame and the Arrow" who is represented and purported to be Burt Lancaster and who ran up the

ladder carrying another person represented to be the boy Rudi in "The Flame and the Arrow" was not in fact, Burt Lancaster.

2. That the person in the motion picture "The Flame and the Arrow" who is represented and purported to be the boy, Gordon Gebert, who plays the part of Rudi in the film and was carried up a ladder was not a boy but was in fact a midget named Billie Curtis. [18]

3. That the person in the motion picture "The Flame and the Arrow" who is represented and purported to be Burt Lancaster, and who ran along the edge of the roof of a church or high building carrying another person depicted to be the boy Rudi in "The Flame and the Arrow" was not in fact Burt Lancaster.

4. That the person in the motion picture "The Flame and the Arrow" who is represented and purported to be the boy Gordon Gebert who plays the part of the boy Rudi in "The Flame and the Arrow" and was carried along the edge of the roof of a church or high building was not in fact a boy, but was in fact a midget named Billie Curtis.

5. That the person in the motion picture "The Flame and the Arrow" who is represented and purported to be Burt Lancaster, and who was shown in said film as leading a group of horsemen riding hard through a forest during night-time, was not in fact Burt Lancaster.

6. That the person in the motion picture "The Flame and the Arrow" who is represented and

purported to be Burt Lancaster, and who drove the two wheel chariot or cart during the fight scene in the marketplace in said film was not in fact Burt Lancaster.

7. That the person in the motion picture "The Flame and the Arrow" who is represented and purported to be Burt Lancaster, and who actually shot the arrow which struck the Hawk, barely missing Rudi's head, in said film, was not in fact Burt Lancaster.

8. That the person in the motion picture "The Flame and the Arrow" who is represented and purported to be Burt Lancaster, and who is doing the sword fighting at the market place shown in said film was not in fact Burt Lancaster.

9. That Burt Lancaster did not do all the feats of strength depicted to have been done by the person known as [19] Dardo in the motion picture "The Flame and the Arrow."

10. That Burt Lancaster did not do all the feats of skill depicted to have been done by the person known as Dardo in the motion picture "The Flame and the Arrow."

11. That Burt Lancaster did not do all the stunts depicted to have been done by the person known as Dardo in the motion picture "The Flame and the Arrow."

In the event Warner Bros. Pictures, Inc. denies the truth of any matter of fact herein requested to be admitted, and plaintiff proves the truth of **any** such matter of fact, notice is hereby given that plaintiff will apply to the court for an order

requiring defendant Warner Bros. Pictures, Inc. to pay plaintiff the reasonable expenses incurred in making such proof, including reasonable attorneys fees, under Rule 37 (c).

Dated: 23rd March, 1951.

MORRIS L. MARCUS,  
/s/ By JACOB SWARTZ

Affidavit of Service by Mail attached. [21]

[Endorsed]: Filed March 26, 1951.

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[Title of District Court and Cause.]

ANSWER TO INTERROGATORIES BY  
WARNER BROS. PICTURES, INC.

Comes Now the defendant, Warner Bros. Pictures, Inc., a corporation, and makes answer to the interrogatories directed to Warner Bros. Pictures, Inc., compiled herein by plaintiff and dated March 23, 1951, as follows:

Interrogatory No. 1

Answer: Burt Lancaster, whose address is 830 Linda Flora Drive, Los Angeles, California.

Interrogatory No. 2

Answer: Gordon Gebert, whose address is 514 Gaylord Drive, Burbank, California.

Interrogatory No. 3

Answer: Burt Lancaster, address above.

Interrogatory No. 4

If by edge of the roof is meant the lower edge of the roof [22] the answer is Gordon Gebert, whose address is listed above. If by edge of the roof is meant the peak of the roof, the answer is Billy Curtis, whose address is 2314 Orchard Drive, Burbank, California.

Interrogatory No. 5

Answer: Burt Lancaster, address above.

Interrogatory No. 6

Answer: Don Turner, whose address is 3203 $\frac{1}{2}$  Riverside Drive, Burbank, California.

Interrogatory No. 7

Answer: Burt Lancaster, address above, shot the arrow which appeared in the picture to be shot. The arrow which actually struck the Hawk (assuming by that to mean the character the Hawk) was not shot by any person.

Interrogatory No. 8

Answer: Burt Lancaster, address above.

Interrogatory No. 9

Answer:

Paul Baxley, 15 La Paloma, Alhambra, Calif.;  
Richard Brehm, 419 Main St., Burbank, Calif.;

Albert Cavens, 3311 Oak Glen Drive, Hollywood 28, Calif.; Bud Cokes, 11554 La Maida, North Hollywood, Calif.; Ben Corbett, 1123 W. 37th Place, Los Angeles 7, Calif.;

Richard Danwill, 1298 Queen Anne Pl., Los Angeles 6, Calif.; James Dime, 8619 Willis Ave., Van

Nuys, Calif.; George Dockstader, 159 Screenland Drive, Burbank, Calif.;

John Epper, 7050 Longridge Ave., Van Nuys, Calif.;

Dick Farnsworth, 3219 Ellington Dr., Los Angeles 28, Calif.;

Matt Gillman, 816 N. Alpine Dr., Beverly Hills, Calif.; William A. (Duke) Green, 4759 Elmer Ave., North Hollywood, Calif.;

Slim Hightower, 13531 Reedley St., Van Nuys, Calif.; Royden Clark, 308 E. Cedar, Apt. A, Burbank, Calif.; [23] Charles Horvath, 1934 N. Highland, Los Angeles 28, Calif.; Clyde Hudkins, 3816 Alameda, Burbank, Calif.; Dick Hudkins, 320 N. Orchard, Burbank, Calif.;

Ed Jauregui, 215 13th St., Newhall, Calif.; Leroy Johnson, 9201 Kewen, Sun Valley, Calif.; Billy Jones, 13443 Van Owen, Van Nuys, Calif.;

Pete Kellett, 10702 Kelmore St., Culver City, Calif.; Fred Kennedy, 233 N. Lincoln Ave., Burbank, Calif.; Harold (Stubby) Kruger, 334½ N. Hollywood Way, Burbank, Calif.;

Walt La Rue, 13120 Magnolia Blvd., N. Hollywood, Calif.; Bert Le Baron, 6720 Franklin Place, Los Angeles 28, Calif.; Carey Loftin, 4066 Rhodes Ave., North Hollywood, Calif.;

Mickey McCardle, 1251 West 45th St., Los Angeles 37, Calif.; Frank McGrath, 1144 N. Vista St., Hollywood 46, Calif.; Frank McMahan, 828 California St., Santa Monica, Calif.; James Magill,



18731 Wyandotte, Reseda, Calif.; Kansas Moehring, 5447 Hollywood Blvd., Los Angeles 36, Calif.; Boyd "Red" Morgan, 14650 Vincennes St., Van Nuys, Calif.;

Artie Ortego, 1330 N. Fairview, Burbank, Calif.;

Ed Parker, 4236 Sherman Oaks Ave., Sherman Oaks, Calif.; Gil Perkins, 10306 Dunkirk Ave., Los Angeles 25, Calif.; Walter Pietila, 833-B 5th St., Santa Monica, Calif.;

Bobby Rose, 5181½ West 20th St., Los Angeles 16, Calif.;

Clint Sharp, 10921 Fairbanks Way, Culver City, Calif.; Jimmy Shaw, United States Marines; Jos. P. Smith, 6526 Woodley Ave., Van Nuys, Calif.; Ray Spiker, 926 Rose St., Burbank, Calif.;

Glenn Thompson, 943 N. Edinburgh, Los Angeles, Calif.; Louis Tomei, 2609 Piedmont, Montrose, Calif.; Don Turner, 3203½ Riverside Dr., Burbank, Calif.;

Dale Van Sickel, 2454 Lyric Ave., Los Angeles 27, Calif.; William (Sailor) Vincent, 4645 Cartwright Ave., North Hollywood, Calif.; [24]

Billy Williams, 541 Western Ave., Glendale 7, Calif.; Terry Wilson, 942 Hammond St., Los Angeles 46, Calif.; Harry Woolman, 501 4th St., Manhattan Beach, Calif.; Al Wyatt, 6723 Beck Ave., North Hollywood, Calif.

Interrogatory No. 10

Answer: Scenes wherein stunt men were used:

Ext. Mountain Pass: Capt. of Guard leads his mounted Hessians and two cart loads of loot. Rocks

start rolling down to block road. Captain discovers Dardo and his friends making the attack. Dardo's men rush in, knock soldiers from their horses hauling carts. Take possession and race away with loot. \* \* \*

Don Turner played the part of the Captain of the Guards with the following stunt men as guards: Frank McGrath, Terry Wilson, Sailor Vincent, John Epper, Ed Juaregui, Charles Horvath.

Extras adjusted for stunts in this scene were: Billy Williams, Artie Ortego, Kansas Moehring, Dick Hudkins, who were riders and part of the band of outlaws.

Ben Corbett played the part of the outlaw who was bulldogged from the cart and Fred Kennedy did the bulldogging.

Ext. Castle Yard: Acts of carnival making entrance to castle gate. Dardo and his troupe appear—and by tricks, make entrance past guards until they are intermingled with carnival acts. Impresario comes out calling for help. As soldiers start to close gate, battle is on. \* \* \*

The following stunt men were used in this scene:

Outlaws: George Dockstader, Ed Parker, Jimmy Shaw, Jos. P. Smith. [25]

Guards: Glenn Thompson, Paul Baxley, Mickey McCardle, Charles Horvath.

Pick-up shots on the same scene were made at a later date using:

Outlaws: Bert Le Baron, George Dockstader, John Epper, Carey Loftin.

Guards: Paul Baxley, Mickey McCradle, Glenn Thompson, Charles Horvath.

Richard Danwill was used at this time in the bear skin.

Int. Dungeon and Kitchen: The bandits are herded into the dungeon. \* \* \* Piccolo and Dardo drop onto guards and subdue them—freeing prisoners. Prisoners are led through the kitchen. \* \* \*

The following stunt men were used in this scene as guards: Duke Green, George Dockstader, Glenn Thompson, Paul Baxley, Mickey McCradle, Terry Wilson.

Extras used in the scene but adjusted for stunts: Jimmy Dime and Bud Cokes.

Int. Castle—Great Hall: This scene is where the carnival acts are going on and Dardo is recognized. Soldiers rush for weapons. Ulrich orders Allesandro arrested, two guards seize Rudi and the melee begins.

Don Turner played the part of a Hessian officer in this scene as well as the following stunt men:

Guards: Terry Wilson, Mickey McCradle, George Dockstader, Glenn Thompson.

Outlaws: Joe Smith, Sailor Vincent, Duke Green, Frank McGrath.

Walter Pietila and Ray Spiker were extras adjusted for stunts as outlaws. [26]

Int. Castle—Great Hall—Castle Corridor and Upper Hall: The sword fight between Dardo and Allesandro was prepared, set up, rehearsed and, in part, photographed with Burt Lancaster, Robert Douglas, Don Turner and Albert Cavens. In this

development of the scene, during the process of rehearsal and preparation, Don Turner frequently doubled Burt Lancaster, and Albert Cavens doubled Robert Douglas, and they sometimes appeared in these respective parts during the shooting of scenes, but in the final make-up of the picture the scenes which appear in the picture show Burt Lancaster himself and Robert Douglas himself staging the fight. Charles Horvath and Glenn Thompson were stunt guards in this scene.

Int. Castle—Great Hall: Retakes and added scenes of the fight. These shots included the following stunt men as soldiers and guards: Ed Parker, Terry Wilson, Sailor Vincent, Glenn Thompson, Don Turner, Paul Baxley, Mickey McCardle, Charles Horvath, Boyd "Red" Morgan.

Int. Anne's Chamber: Dardo and Piccolo climb in window of Anne's chamber. Glenn Thompson acts as guard who fires arrow after Dardo and Piccolo retreat through window.

Ext. Portcullis Tower: Soldier starts to turn wheel to lower the gate. Dardo hits him with his pole, topples him from tower. Dardo then fights. Two more soldiers sway from wheel. Rescue of the prisoners.

This scene included the following stunt men as soldiers: Bert LeBaron, George Dockstader, Mickey McCardle, Joe Smith, Paul Baxley, Carey Loftin.

Ext. Dardo's Retreat: This scene included as townsmen the following stunt men: Charles Horvath, Mickey McCardle, Duke Green (trapped by the snare). [27]

Ext. City St. and Square—Ext. Roof Tops: Escape after capture. Dardo and Rudi make get-away over roofs.

This scene, the latter part of which shows the figure of Dardo carrying Rudi in profile along the top of the roof, was photographed at least twice. In one of the takes Don Turner doubled for Burt Lancaster in the part of Dardo, with Billy Curtis doubling for Rudi. In the other take of this scene Burt Lancaster himself performed the role of Dardo, with Billy Curtis doubling for Rudi. The latter pictures (those which show Burt Lancaster himself) are the ones which were actually used in the picture.

The following six stunt men worked as guards in this scene: Glenn Thompson, Al Wyatt, Charles Horvath, Joe Smith, Terry Wilson, Paul Baxley.

Ext. Piazza: (2nd Unit) Dardo and his band race in on their horses to fight Hessians and rescue Papa Pietro. Dardo jumps to cart, drives it out.

The following stunt men were included in the scene:

Guards: Sailor Vincent, Charles Horvath, Mickey McCardle, Duke Green, Ed Parker, Carey Loftin, Bert LeBaron, Stubby Kruger, James Magill, Frank McMahan, Glenn Thompson, Paul Baxley, Pete Kellett, Billy Jones, George Dockstader, Harry Woolman, Louis Tomei, Jimmy Shaw, Dale VanSickel, Gil Perkins.

Outlaws: Richard Brehm, Matt Gillman, Fred Kennedy, Dick Hudkins, Walt La Rue, Joe Smith, Dick Farnsworth, Slim Hightower, Billy Williams,

Clint Sharp, John Epper, Clyde Hudkins, Frank McGrath, Royden Clark, Leroy Johnson. [28]

This scene also includes as doubles: Don Turner doubling for Burt Lancaster in cart scenes; Bobby Rose doubling for Papa Pietro; Terry Wilson doubling for Mel Archer.

#### Interrogatory No. 11

Our records show only one stunt man who wore the costume of Dardo \* \* \* Don Turner, address above.

Scenes in which he performed: (a) Escape after capture over city roof tops. (In one take; not used in picture); (b) 2nd. Unit shot of Papa Pietro's rescue; (c) Sword fight between Dardo and Allessandro. (In rehearsals and shots not shown in picture.)

#### Interrogatory No. 12

Answer: Gordon Bau, 4241½ Cahuenga Blvd., No. Hollywood, Calif.; Roy Dumont, 15445 Lassen St., San Fernando, Calif.; Ross Ramsay, 1016 Catalina St., Burbank, Calif.; Fay Hanlon, 4745 Colfax St., No. Hollywood, Calif.

#### Interrogatory No. 13

Answer: 2nd Unit Shots:

Ext. Mountain Town—Ext. Road: Names and addresses of actors in this scene (no stunt men used): Burt Lancaster, 830 Linda Flora Drive, West Los Angeles, Calif.; Mel Archer, 121 N. Swall Drive, Beverly Hills, Calif.; Robin Hughes, 554 Ramona, Laguna Beach, Calif.; Forrest Matthews, 6007

Lewis St., Dallas, Texas; Alex Sharp, 176 S. Mansfield, Los Angeles 36, Calif. [29]

Ext. Street and Square: Papa Pietro's Rescue. Names and addresses of stunt men used in this scene:

Paul Baxley, 15 La Paloma, Alhambra, Calif.; Richard Brehm, 419 Main St., Burbank, Calif.;

Bud Cokes, 11554 LaMaida, No. Hollywood, Calif.;

James Dime, 8619 Willis Ave., Van Nuys, Calif.;

John Epper, 7050 Longridge Ave., Van Nuys, Calif.;

Dick Farnsworth, 3219 Ellington Dr., Los Angeles 28, Calif.;

Matt Gillman, 816 N. Alpine Drive, Beverly Hills, Calif.; Duke Green, 4759 Elmer Ave., No. Hollywood, Calif.;

Slim Hightower, 13531 Reedley St., Van Nuys, Calif.; Charles Horvath, 1934 N. Highland, Los Angeles 28, Calif.; Clyde Hudkins, 3816 Alameda, Burbank, Calif.; Dick Hudkins, 320 North Orchard, Burbank, Calif.;

Leroy Johnson, 9201 Kewen, Sun Valley, Calif.; Billy Jones, 13443 Van Owen, Van Nuys, Calif.;

Pete Kellett, 10702 Kelmore St., Culver City, Calif.; Fred Kennedy, 233 N. Lincoln Ave., Burbank, Calif.;

Walt La Rue, 13120 Magnolia Blvd., North Hollywood, Calif.; Bert Le Baron, 6720 Franklin Pl., Los Angeles 28, Calif.; Carey Loftin, 4066 Rhodes Ave., No. Hollywood, Calif.;

Mickey McCardle, 1251 West 45th St., Los An-

geles 37, Calif.; Frank McGrath, 1144 N. Vista St., Hollywood 46, Calif.; Frank McMahon, 828 California, Santa Monica, Calif.; James Magill, 18731 Wyandotte, Reseda, Calif.;

Ed Parker, 4236 Sherman Oaks Ave., Sherman Oaks, Calif.; Gil Perkins, 10306 Dunkirk Ave., Los Angeles 25, Calif.;

Bobby Rose, 5181½ West 20th St., Los Angeles 16, Calif.;

Clint Sharp, 10921 Fairbanks Way, Culver City, Calif.; Jimmy Shaw, United States Marines; Joe P. Smith, 6526 Woodley Ave., Van Nuys, Calif.;

Glenn Thompson, 943 N. Edinburgh, Los Angeles, Calif.; Louis Tomei, 2609 Piedmont, Montrose, Calif.; Don Turner, 3203½ Riverside Dr., Burbank, Calif.;

Dale Van Sickel, 2454 Lyric Ave., Los Angeles 27, Calif.; Sailor Vincent, 4645 Cartwright Ave., No. Hollywood, Calif.;

Billy Williams, 541 Western Ave., Glendale 7, Calif.; Terry Wilson, 942 Hammond St., Los Angeles 46, Calif.; Harry Woolman, 501 4th St., Manhattan Beach, Calif.

#### Interrogatory No. 14

Answer: To photograph scenes usually without principal actors appearing therein and occasional participation in trick shots.

#### Interrogatory No. 15

Answer: Same as Interrogatory No. 14 above.

#### Interrogatories Nos. 16 and 17

Answer: These interrogatories are not answered



for the reason they involve many days or weeks of work by numerous personnel in tracing the names, addresses and places at which the various personnel were used in the scenes which were enacted or rehearsed at such times, very numerous in quantity and involving a great amount of work which is unnecessary due to the fact that the information sought is relevant only in the most remote degree and the information could not possibly be furnished except by obtaining an extended additional time for the arduous research involved.

#### Interrogatory No. 18

Answer: Warner Bros. Pictures, Inc. by contract are entitled to receive return of all moneys expended and advanced by it in the making of the picture, together with interest thereon, costs of distribution, the exclusive right to distribute the picture for fifteen (15) years and fifty per cent (50%) of the net profits after recoupment of all production, distribution and advertising costs.

#### Interrogatory No. 19

Answer: Warner Bros. Pictures, Inc. made no offer to the effect that \$1,000,000, or any sum, would be paid to anyone who [31] could prove that Burt Lancaster did not perform all the stunts and feats of strength and skill which he is depicted as having done or purported to have done in the motion picture "The Flame and The Arrow." The Advertising and Publicity Department of Warner Bros. Pictures, Inc. contemplated making an offer in connection with an affidavit signed by ten leading stunt

men appearing in motion pictures who certified to the fact that Burt Lancaster personally performed the following stunts:

1. Executed somersaults and pirouettes from horizontal bar (six in all) twenty (20) feet above the ground, with swing-up from one bar to the other, upstanding on one foot. From last bar he dropped 10 feet to a balcony, where Nick Cravat approached with pole on which he slid to the ground for a grand finale.

2. Climbed up a 25-foot pole balanced on the forehead of Nick Cravat, to finish off in a performance resembling a flag, and so called, professionally, a "flag."

3. From 35 feet in the air walked across a pole in tight-wire fashion from ledge to ledge with no net underneath.

4. Climbed a 30-foot rope, hand over hand.

5. Received Nick Cravat in his arms from high jump and tossed Cravat away in a somersault in swing time.

6. Executed a "three man high" in the company of Nick Cravat and one, with finish off including a lean to ground fall and then a roll over.

7. Various and sundry riding and action stunts in battle scenes and combat encounters, as well as hand-to-hand fight and sword duel with Robert Douglas.

It was intended to make an offer in the following language:

"The producers of 'The Flame and The Arrow' soon to be distributed by Warner Bros. have a

million dollars to give away. [32] The sum is offered to anyone who can prove that Burt Lancaster did not himself perform all the stunts attested to by the stunt men who worked in the picture.”

This offer was never made; nor did Warner Bros. Pictures, Inc. ever authorize any person, firm or corporation to make such offer on its behalf.

Interrogatory No. 20

No offer was ever made by Warner Bros. Pictures, Inc., or authorized by it but in a Newsreel picture issued by Warner News, Inc., a Delaware corporation, the following script was used without authority from Warner Bros. Pictures, Inc. by Warner News, Inc., in connection with a picture of Burt Lancaster, counting money and in conversation with certain newspaper reporters:

“In Hollywood, Burt Lancaster counts the one million dollar reward offered by Warner Bros. to anyone who can prove that Burt Lancaster, himself, didn’t perform his daring stunts in ‘The Flame and The Arrow.’”

Interrogatory No. 21

Answer: Never.

Interrogatory No. 22

Answer: No, except that on inquiry from the plaintiff in this action on or about October 9, 1950, one of the attorneys for Warner Bros. Pictures, Inc. told him that no such offer had been made.

Interrogatory No. 23

Answer: No.

## Interrogatory No. 24

Answer: As to the names and addresses of all persons employed directly or indirectly by Warner Bros. Pictures, Inc. in connection with the advertising and publicity of the motion picture "The Flame and The Arrow" the answer is so extensive and would require such considerable research in California, New York and [33] elsewhere that it would put an unusual and unnecessary burden upon the defendant to make answer thereto; to the matter of the making of the alleged offer referred to in Interrogatory No. 19, the answer is that no person was employed directly or indirectly by Warner Bros. Pictures, Inc. to make such offer.

## Interrogatory No. 25

Defendant declines to answer this interrogatory for the reason that the question is irrelevant to the issues involved and because it would take an unnecessary amount of time and work and create a great burden upon the defendant to enable it to ascertain the information required by the question without any commensurate advantage to either party.

## Interrogatory No. 26

Answer: A "sneak" preview was had at Huntington Park on April 20, 1950. On April 21st and 22nd, 1950 some small trimming, involving principally the removal of a love scene, was taken from the picture. The negative was then sent on April 21 and 23, 1950 to Technicolor where it was put in final form. There was a press preview on June 13, 1950 at Warner Bros. Theatre in Hollywood. The

first public showing was on national release dated July 22, 1950. No cutting, trimming or alteration in the picture was done after April 22, 1950.

Interrogatory No. 27

Answer: Don Turner, address above, driving cart in rescue scene.

Interrogatory No. 28

Answer: No motion picture-trailer of the character described in the question was made.

Interrogatory No. 29

Answer: Warner Bros. Pictures, Inc. is the owner of all the issued capital stock of Warner News, Inc., which produces the Warner-Pathe Newsreel. [34]

Interrogatory No. 30

Answer: Same as Interrogatory No. 29.

Interrogatory No. 31

See answer to Interrogatory No. 10.

Interrogatory No. 32

See answer to Interrogatory No. 6.

Interrogatory No. 33

See answer to Interrogatory No. 4.

Interrogatory No. 34

Answer: Martin Akmagin; address unknown.

Interrogatory No. 35

See answers to Interrogatories Nos. 6 and 10.

Interrogatory No. 36

Answer: Don Turner; address above. Also see answers to Interrogatories Nos. 6, 10 and 11.

## Interrogatory No. 37

Answer: Salary for each day Don Turner worked:

Date—Part	Base Rate	Adjustment	O.T.	Total
10-12-49 Actor—"Capt. of Guards" .....	\$ 75.00	\$ 35.00	\$ 14.07	124.07
Adj. for leading stunt horses				
10-13-49 Cont. of role as Capt. of Guards .....	75.00	.....	7.03	82.03
10-20-49 Doubling Lancaster....	55.00	.....	6.88	.....
Adj. for climbing and running over roof tops.....	.....	145.00	.....	206.88
10-21-49 Doubling Lancaster in same scene .....	55.00	.....	.....	55.00
10-27-49 Doubling Lancaster....	55.00	.....	.....	.....
Adj. for chases, many falls, fight with spears, etc.....	.....	145.00	100.00	300.00
11- 5-49 Hessian Officer .....	55.00	.....	.....	55.00
11- 7-49 Cont. of role.....	55.00	.....	.....	.....
Adj. for stair falls.....	.....	45.00	.....	100.00
11-29-49-12-15-49 incl. & 12-24-49 Weekly P. R....	350.00	.....	.....	.....
Fencing Instructor per wk. ....	.....	.....	.....	933.33
12-14-49 Fencing Double for Lancaster .....	100.00	.....	31.25	131.25
12-15-49 Fencing Double for Lancaster .....	100.00	.....	25.00	125.00
12-16-49 Stunt Guard .....	55.00	.....	6.88	61.88
Total Amount Paid.....				\$2174.44

Note: All rates quoted above, with the exception of the \$350.00 figure, which is designated as per the week, are daily rates.

## Interrogatory No. 38

Answer: Double for Francis Pierlot who enacted the role of Papa Pietro.

## Interrogatory No. 39

Answer: Double for Francis Pierlot, as above.

Interrogatory No. 40

Answer: About 20 feet.

Interrogatory No. 41

Answer: No.

Interrogatory No. 42

Answer: See Interrogatory No. 41 above.

Interrogatory No. 43

Answer: None.

Interrogatory No. 44

Answer: Alan Crosland, 4015 Willowcrest Ave., North Hollywood, Calif.; James Moore, 4034 Alta Mesa Ave., North Hollywood, Calif.

Interrogatory No. 45

Answer: If the "sneak" preview is regarded as a public [36] presentation, the answer appears in response to Interrogatory No. 26. The national release of July 22, 1950 is regarded by the defendant as being the first public showing of this picture. There was no cutting after that date or at any time after April 22, 1950.

Interrogatory No. 46

See Answer to Interrogatory No. 26

Interrogatory No. 47

Answer: Yes.

Interrogatory No. 48

Answer: So far as is known, only Lancaster and the actress who participated with him in the love scene.

## Interrogatory No. 49

Answer: None.

PRESTON & FILES and  
 EUGENE D. WILLIAMS,  
 /s/ By EUGENE D. WILLIAMS,  
 Attorneys for Defendant, Warner  
 Bros. Pictures, Inc. [37]

Duly Verified. [38]

Acknowledgment of Service attached. [39]

[Endorsed]: Filed April 6, 1951.

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[Title of District Court and Cause.]

ANSWER TO REQUEST FOR ADMISSIONS  
 UNDER RULE 36

In response to plaintiff's Request for Admissions under Rule 36 and subject to any and all pertinent objections as to admissibility which may be interposed at the time of trial, defendant Warner Bros. Pictures, Inc., a corporation, answers as follows:

1. No.
2. No.
3. No.
4. If by the edge of the roof is meant the lower edge the answer is "No;" if by the edge of the roof is meant the crest of the roof the answer is "yes."
5. No.



6. Yes.

7. The person who is represented and purported to be Burt Lancaster, and who shot the arrow which struck the Hawk, was in [40] fact Burt Lancaster; no person shot an arrow which in fact struck the Hawk.

8. No.

9. No.

10. No.

11. No.

Dated: April 5, 1941.

FRESTON & FILES and  
EUGENE D. WILLIAMS,

/s/ By EUGENE D. WILLIAMS,  
Attorneys for Defendant,

Warner Bros. Pictures, Inc. [41]

Duly Verified. [42]

Acknowledgment of Service attached. [43]

[Endorsed]: Filed April 6, 1951.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above-entitled action came on regularly for trial the 21st day of July, 1953, before Honorable Ben Harrison, Judge of the above-entitled Court, sitting without a jury, a trial by jury having been expressly waived. Plaintiff was represented by

Messrs. Sampson & Dryden and Morris L. Marcus, his attorneys; defendant Warner Bros. Pictures, Inc. was represented by Messrs. Freston & Files and Eugene D. Williams, its attorneys.

Evidence was offered and received, the cause argued and submitted to the Court for its decision; and the Court, having fully considered the evidence and the arguments of counsel, now files the following, its Findings of Fact and Conclusions of Law:

### Findings of Fact

#### I.

The Court finds that the defendant Warner Bros. Pictures, Inc., did not produce or make the motion picture "The Flame and the Arrow" described in paragraph V of the complaint herein but it was produced by Norma Productions, Inc., a corporation, under contract with said defendant Warner Bros. Pictures, Inc., and that said motion picture was thereafter distributed by defendant Warner Bros. Distributing Corporation, a corporation, as alleged in said paragraph V of the complaint.

#### II.

The Court finds that on or about July 17, 1950, the defendant, acting through its Studio Publicity Manager, caused Burt Lancaster to appear at the vaults of a Los Angeles bank, where he was photographed by a motion picture camera and a news reel sequence prepared showing said Burt Lancaster behind the bars in said bank vault in his shirt sleeves purporting to count money, during

which the following dialogue took place between said Lancaster and young ladies who appeared in said picture:

“Lancaster: 999,998,999,999, One million dollars. I had to count it three times to make sure.

Girl: Here he is, ladies.

Rocklin: Hello, Burt, I’m Miss Rocklin of the Los Angeles Mirror.

Lancaster: How do you do?

Rocklin: Tell me, is this really on the level?

Lancaster: Really on the level? Well, so much so that I’m trying to figure how to win it myself.

Marsh: Burt, I’m Marilyn Marsh of International News Service.

Lancaster: How do you do, Ma’am? [45]

Marsh: I just saw you in “The Flame and the Arrow.” Now look. You can’t make me believe that it was you doing those *summersaults* from, what was it, six horizontal bars, 50 feet in the air?

Lancaster: Sixty feet. Why not? Before I got lucky in Hollywood, I used to make my living in the circus. I did stuff like that for coffee and donuts.

Marsh: What happened if you missed?

Lancaster: Somebody got an extra donut.

Helming: I’m Ann Helming of the Hollywood Citizen-News.

Lancaster: Well, hello.

Helming: It’s hard to believe that any producer wants to give away a million dollars.

Lancaster: Well, Ann, they really don’t want

to give away a million dollars if they can help it. But this is a genuine, bona fide offer.

Helming: What if somebody proves that it wasn't you who walked across the pole 35 feet in the air?

Lancaster: If anybody can prove that, they'll get the million dollars and I'll go back to coffee and donuts. Satisfied?

Rocklin: Sounds good enough for me. Come on, girls, let's take another look at 'The Flame and the Arrow.' "

As prepared by the Publicity Department of Warner Bros. Pictures, Inc., the announcement accompanying said sequence was in the following language:

"The producers of *The Flame and the Arrow* offer a reward of \$1,000,000 to anyone who can prove that Burt Lancaster did not himself perform [46] all the stunts attested to by the stunt men who worked in the picture."

The negative film of said sequence, with the sound track accompanying the same, was sent to Warner News, Inc., a corporation, the stock of which is wholly owned by Warner Bros. Pictures, Inc., with the above introductory language accompanying said negative film and sound track.

Thereafter certain film editors or script writers in the employ of Warner News, Inc., substituted in the place of said introductory language provided by Warner Bros. Pictures, Inc., the following words:

"In Hollywood Burt Lancaster counts the \$1,000,-

000 reward offered by Warner Bros. to anyone who can prove that Burt himself did not perform his daring stunts in *The Flame and the Arrow*.”

That thereafter said sequence, including the last quoted introduction, as a part of a news reel, was made public by showing it in various motion picture theatres. That except as herein found no other offers or purported offers in connection with said motion picture, *The Flame and the Arrow*, were made or authorized by the defendant, and the Court specifically finds that said defendant did not offer to pay the sum of \$1,000,000 or any sum to anyone who could prove that said Burt Lancaster did not do or perform all the stunts he was shown doing or purported to perform in said motion picture.

### III.

The Court finds that the plaintiff saw the news reel above described and a news item appearing in a newspaper which was offered and received as Exhibit 6 in this case, but finds that it is not true that plaintiff, in reliance thereon or otherwise, or at all, did gather or seek evidence or prove as required by said alleged [47] offer, and the Court finds that the plaintiff did not accept said offer and did not notify the defendants, and in particular the defendant Warner Bros. Pictures, Inc., or the attorneys of said defendant, or either of them, of plaintiff's acceptance of said offer, either as alleged in paragraph VII of said complaint, or otherwise, or at all.

## IV.

The Court finds that it is not a fact that the plaintiff pursuant to said alleged contract or otherwise or at all did offer proof or did submit proof to the defendant Warner Bros. Pictures, Inc. either in full compliance with said alleged offer of said defendant or otherwise or at all, and the Court finds that it is not a fact that at all times in said complaint mentioning plaintiff was ready, able or willing to submit further or any proof or to present further or any performance pursuant to said alleged offer and alleged acceptance of said agreement or otherwise or at all.

## V.

The Court finds that plaintiff has not duly or at all performed any or all of the conditions required by said alleged contract to be performed on his part.

## VI.

The Court finds that plaintiff made demand upon the defendant Warner Bros. Pictures, Inc. for the payment of the sum of \$1,000,000.00 but finds that said demand was not pursuant to any acceptance or performance of said alleged offer or contract. The Court further finds that the defendant Warner Bros. Pictures, Inc. refused and still refuses to pay said sum of \$1,000,000.00 or any part thereof.

## VII.

The Court finds that all and singular the allegations of paragraph II of the Second Separate and

Distinct Cause of Action set forth in said complaint are not true. [48]

### VIII.

The Court finds that all and singular allegations set forth in paragraph III of the said Second Separate and Distinct Cause of Action are not true.

### IX.

The Court finds that no offer as set forth in the complaint was made by defendant Warner Bros. Pictures, Inc. or for it or on its behalf. It also finds that said alleged offer was in fact expressly withdrawn before plaintiff attempted to accept the same.

### X.

The Court finds that Burt Lancaster himself actually performed all his daring stunts shown in the picture, *The Flame and the Arrow*. The Court finds that the sequence in said picture which showed the character Dardo carrying the character Rudi for about twenty-five feet along the crest of a roof, in the distance and silhouetted against the sky, was actually performed, not by Burt Lancaster, but by one Don Turner, who doubled for Lancaster and who carried a midget. The Court finds that the action so portrayed was not a stunt and was not daring or dangerous. That in the sequence which shows the character Dardo riding into the courtyard on a horse which he brings to a stop, and in which he steps from the horse to the bed of a stationary two-wheeled cart, cuts the rope

by which the character Pietro was suspended, and then drives the horse pulling the cart from the courtyard, was performed by one Don Turner, who doubled in said sequence for Burt Lancaster, but that the action of said sequence did not constitute a stunt, nor was it daring or dangerous. Without limiting the effect of the Court's finding that said Burt Lancaster did personally perform all of his daring stunts in said picture, the Court finds specifically that he did do the entire sequence of the duel in which the character Dardo is shown fighting the character Alessandro, and that the only portions of said sequence which appeared on the screen in which the character Dardo is [49] portrayed by a double, are two shots showing a portion of the shoulder and arm of Don Turner doubling for Lancaster. The Court also finds that said duel sequence was not a stunt and was not daring or dangerous.

#### Conclusions of Law

And as Conclusions of Law, based upon the foregoing Findings of Fact, the Court finds and concludes:

##### I.

That no valid offer as set forth in the complaint herein was made by defendant Warner Bros. Pictures, Inc.

##### II.

That said alleged offer was not accepted by the plaintiff herein nor was any attempt made to accept said alleged offer until after the same had been expressly withdrawn.



III.

That Burt Lancaster himself did perform all his daring stunts in the motion picture *The Flame and the Arrow*.

IV.

That the sequences shown in the picture *The Flame and the Arrow* wherein Don Turner appeared as a double for Burt Lancaster were not stunts and were not daring or dangerous.

V.

That plaintiff should take nothing by this action, and that the defendant Warner Bros. Pictures, Inc., should have and recover its costs herein expended.

Let judgment be entered accordingly.

Witness my hand this 30th day of September, 1953.

/s/ BEN HARRISON,  
District Judge. [50]

Submitted by:

FRESTON & FILES and  
EUGENE D. WILLIAMS,  
/s/ By EUGENE D. WILLIAMS,  
Attorneys for Defendant.

Approved as to form:

SAMPSON & DRYDEN and  
MORRIS L. MARCUS [51]

Acknowledgment of Service attached. [52]  
[Endorsed]: Filed September 30, 1953.

In the United States District Court for the Southern District of California, Central Division

Civil No. 12479-BH

JULES GARRISON, Plaintiff,  
vs.

WARNER BROS. PICTURES, INC., a corporation, et al., Defendants.

### JUDGMENT

The above entitled action came on regularly for trial the 21st day of July, 1953, before Honorable Ben Harrison, Judge of the above entitled Court, sitting without a jury, trial by jury having been expressly waived. Plaintiff was represented by Messrs. Sampson & Dryden and Morris L. Marcus, his attorneys; defendant Warner Bros. Pictures, Inc. was represented by Messrs. Freston & Files and Eugene D. Williams, its attorneys.

Evidence was offered and received, the cause argued and submitted to the Court for its decision, and the Court, having fully considered the evidence and the arguments of counsel, heretofore filed its written Findings of Fact and Conclusions of Law, wherein and whereby judgment was ordered that plaintiff take nothing and [53] that defendant Warner Bros. Pictures, Inc. do have and recover its costs.

Now, Therefore, in consideration of the premises, it is hereby ordered, adjudged and decreed that plaintiff take nothing by this action and that de-

defendant Warner Bros. Pictures, Inc. do have and recover its costs herein expended and hereby taxed at the sum of \$498.92\* Retaxed at \$249.32.

Witness my hand this 30th day of September, 1953.

/s/ BEN HARRISON,  
District Judge.

Submitted by:

FRESTON & FILES and  
EUGENE D. WILLIAMS,  
/s/ By EUGENE D. WILLIAMS,  
Attorneys for Defendant.

Approved as to form:

SAMPSON & DRYDEN and  
MORRIS L. MARCUS. [54]

\* Cancelled in copy.

[Endorsed]: Judgment docketed and entered October 1, 1953.

[Endorsed]: Filed September 30, 1953.

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[Title of District Court and Cause.]

NOTICE OF MOTION

To Defendant Warner Brothers Pictures, Inc., and Freston & Files and Eugene D. Williams, its attorneys:

You and Each of You Will Please Take Notice that plaintiff will move the above entitled court, before the Honorable Ben Harrison, Judge presiding, in the Federal Building, Los Angeles, Cali-

fornia, at 10 o'clock a.m., or as soon thereafter as counsel can be heard, on Monday, November 2, 1953, for an order amending the Findings of Fact and Conclusions of Law in accordance with the Motion for Amendment and Revision of Findings of Fact and Conclusions of Law, copy of which is served concurrently herewith.

Dated: October 8, 1953.

SAMPSON & DRYDEN and  
MORRIS L. MARCUS,

/s/ By JACOB SWARTZ [55]

MOTION FOR AMENDMENT AND REVISION  
OF FINDINGS OF FACT AND CONCLU-  
SIONS OF LAW

Plaintiff, in accordance with the provisions of Rule 52 (b) of the Federal Rules of Civil Procedure, moves the Court for an order that the Findings of Fact and Conclusions of Law entered herein be amended as follows:

1. Finding of Fact I be amended by striking out the present Finding of Fact I and substituting in lieu thereof the following:

I.

The Court finds that defendant Warner Bros. Pictures, together with Norma Productions, Inc., a corporation, made the motion picture "The Flame and the Arrow" under a contract, and after said motion picture was so made, it was distributed by defendant.

2. Finding of Fact II should be amended by striking out the last paragraph thereof on page 4, lines 17 through 26, and substituting in lieu thereof the following: [56]

II.

That thereafter said sequence, including the last quoted introduction, as a part of the news reel, was made public by defendant who showed it in various motion picture theatres.

3. Finding of Fact III should be amended by the addition of a paragraph that the stunts attested to by the stunt men who worked on the motion picture "The Flame and the Arrow" were as follows:

(1) Executed somersaults and pirouettes from horizontal bar (six in all) twenty (20) feet above the ground, with swing-up from one bar to the other, upstanding on one foot. From last bar he dropped 10 feet to a balcony, where Nick Cravat approached with pole on which he slid to the ground for a grand finale.

(2) Climbed up a 25-foot pole balanced on the forehead of Nick Cravat, to finish off in a performance resembling a flag, and so called, professionally, a "flag."

(3) From 35 feet in the air walked across a pole in tight-wire fashion from ledge to ledge with no net underneath.

(4) Climbed a 30-foot rope, hand over hand.

(5) Received Nick Cravat in his arms from high jump and tossed Cravat away in a somersault in swing time.

(6) Executed a "three man high" in the company of Nick Cravat and one, with finish off including a lean to ground fall and then a roll over.

(7) Various and sundry riding and action stunts in battle scenes and combat encounters, as well as hand to hand fight and sword duel with Robert Douglas.

4. Finding of Fact III should be further amended by striking out the language appearing therein and substituting in lieu thereof the following:

### III.

The Court finds that at or about the time of the showing of the news reel above described, a news item appeared in the Los Angeles Mirror consisting of a photograph of Burt Lancaster and Mirror reporter, Kendis Rochlen, and the following language underneath the picture:

"\$1,000,000 if you can prove Burt  
didn't do it

"Things cannot be so bad in the movie business. Warner Brothers offered to give away \$1,000,000 today. It is waiting in cash for anyone who can prove Burt Lancaster did not do all the stunts he is shown doing in a new picture. In "The Flame and the Arrow", apparently no drawing room drama, Lancaster performs somersaults from the horizontal bars, walks across a pole 35 feet above ground, and scales walls like a window washer gone beserk."

5. Findings of Fact IV should be amended by striking out the language therein and substituting in lieu thereof the following: [58]

IV.

The Court finds that plaintiff saw the news reel above described and the news item in the Los Angeles Mirror above described and did gather and seek evidence to accept the offer, and the Court further finds that the plaintiff did accept the offer and notified defendant and its attorneys of said acceptance.

6. Finding of Fact V should be amended by striking out the language therein and substituting in lieu thereof the following:

V.

The Court finds that plaintiff submitted proof to defendant in compliance with the terms of said offer and was ready, able and willing to submit further proof pursuant to said offer and acceptance.

7. Finding of Fact VI should be amended by striking out the language therein and substituting in lieu thereof the following:

VI.

The Court finds that plaintiff made demand upon defendant for payment of the sum of \$1,000,000 pursuant to said acceptance and performance of the offer and contract. The Court further finds that defendant refused and still refuses to pay said sum of \$1,000,000 or any part thereof.

8. Finding of Fact VII should be amended by

striking out the language therein and substituting in lieu thereof the following:

VII.

The Court finds that defendant declined and refused to permit plaintiff to submit further [59] proof of his acceptance of said offer and contract and plaintiff was excused by reason of waiver and estoppel on the part of defendant from submitting further proof to defendant.

9. Finding of Fact VIII should be amended by striking out the language therein and substituting in lieu thereof the following:

VIII.

The Court finds that plaintiff at all times was and is ready, able and willing to submit the proof as part of its acceptance of said offer and contract.

10. Finding of Fact IX should be stricken and the following substituted in lieu thereof:

IX.

The Court finds that the offer above described was made by defendant and that the purported withdrawal of said offer did not take place prior to plaintiff's acceptance thereof.

11. Finding of Fact X should be amended as follows:

(A) By striking out the language at the commencement of said paragraph, on page 6, lines 11 to 13, "The Court finds that Burt Lancaster himself actually performed all his daring stunts shown in the picture, *The Flame and the Arrow*."

(B) By striking out the language on page 6,



lines 18 and 19, as follows: "The Court finds that the action so portrayed was not a stunt and was not daring or dangerous."

(C) By striking out the language on page 6, lines 25 and 26, "but that the action of [60] "said sequence did not constitute a stunt, nor was it daring or dangerous."

(D) By striking out the remainder of said Finding of Fact X commencing with the word "Without" on page 6, line 27, and ending with the word "dangerous" on page 7, line 4, and substituting in lieu thereof:

The Court finds that Don Turner doubled for Burt Lancaster in a portion of the duel scene in which the character Dardo is shown fighting the character Alessandro.

12. Conclusion of Law I should be amended by striking out the language therein and substituting in lieu thereof the following:

I.

The offer set forth in the complaint was made by defendant.

13. Conclusion of Law II should be amended by striking out the language therein and substituting in lieu thereof the following:

II.

The offer was accepted by plaintiff before defendant attempted to revoke the same.

14. Conclusion of Law III should be amended by striking out the language therein and substituting in lieu thereof the following:

## III.

That Burt Lancaster did not himself perform all his daring stunts in the motion picture *The Flame and the Arrow*. [61]

15. Conclusion of Law IV should be amended by striking out the language therein and substituting in lieu thereof the following:

## IV.

That the sequences shown in the picture *The Flame and the Arrow* wherein Don Turner appeared as a double for Burt Lancaster were stunts and were daring and dangerous.

16. Conclusion of Law V should be amended by striking out the language therein and substituting in lieu thereof the following:

## V.

That plaintiff should recover from defendant Warner Bros. Pictures, Inc., the sum of \$1,000,000 together with his costs expended herein.

Wherefore, plaintiff prays the above entitled Court for an order amending the Findings of Fact and Conclusions of Law in accordance with the terms of this Motion.

Dated: October 8, 1953.

SAMPSON & DRYDEN and  
MORRIS L. MARCUS,

/s/ By JACOB SWARTZ, [62]

Acknowledgment of Service attached. [63]

[Endorsed]: Filed October 9, 1953.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

Plaintiff, in accordance with the provisions of Rule 59 (b) of the Federal Rules of Civil Procedure and Rule 17 of the local rules of the above entitled Court, moves the Court for an order vacating and setting aside the judgment entered herein and for a new trial on the following grounds:

1. The Findings of Fact are against the weight of the evidence.

2. The Findings of Fact are against the law.

3. Newly discovered evidence material for the plaintiff which he could not with reasonable diligence have discovered and produced at the trial.

4. Insufficiency of evidence to justify the Findings of Fact and Conclusions of Law and judgment in the following particulars:

(A) Finding of Fact I expressly finds that defendant did not make the motion picture "The Flame and [64] The Arrow" whereas the contract between Norma Productions, Inc. and defendant, in evidence as plaintiff's Exhibit No. 7, clearly shows that the defendant was completely in control of the actual making of that motion picture.

(B) Finding of Fact I further finds that the motion picture was distributed by "defendant Warner Bros. Distributing Corporation, a corporation" whereas, in fact, no such defendant was named or appeared in said action; defendant Warner Bros. was the contracting party to distribute the motion picture under the contract in evidence as plaintiff's

Exhibit No. 7; and defendant utilized Warner Bros. Distributing Corporation as its agent in distributing the motion picture and there is no finding anywhere of such agency in the Findings of Fact.

(C) Finding of Fact II that defendant did not offer to pay the sum of \$1,000,000, or any sum, to anyone who could prove that Burt Lancaster did not do or perform all the stunts he is shown doing or purported to perform in said motion picture, is contrary to the fair meaning of the evidence immediately preceding it.

(D) Findings of Fact III omits to find the contents of the news item in the Los Angeles Mirror referred to therein. Finding of Fact III that the plaintiff did not rely upon said news reel and news item, nor gather nor seek evidence [65] as required by the offer, nor accept the offer, nor notify defendant or its attorneys of his acceptance is against the evidence which was uncontradicted at the time of the trial.

(E) Finding of Fact IV that the plaintiff did not offer proof to defendant in compliance with the offer and was not ready, able and willing to submit further proof, is against the weight of the uncontradicted evidence at the time of the trial.

(F) Finding of Fact V that the plaintiff did not perform any of the conditions required by the contract is against the weight of the evidence at the time of the trial.

(G) Finding of Fact VI that the demand of plaintiff against defendant for \$1,000,000 was not

pursuant to any acceptance or performance is against the uncontradicted evidence at the time of trial.

(H) Finding of Fact VII that it is not true that defendant waived any further performance by plaintiff and is estopped from claiming that plaintiff did not render further performance is against the weight of the evidence.

(I) Finding of Fact VIII that plaintiff was not ready, willing and able to submit additional proof if necessary or if requested, is against the weight of evidence.

(J) Finding of Fact IX that the offer set forth in the complaint was not made by defendant [66] or on its behalf is against the weight of the evidence, particularly in view of the last sentence in the said Finding that this offer was withdrawn before plaintiff attempted to accept it because it is logically inconsistent to find that no offer was made and then to further find immediately thereafter that the offer was withdrawn by the very same defendant.

(K) Finding of Fact X that the activities therein described, performed by Don Turner, a Hollywood stunt man, for Burt Lancaster, did not constitute stunts, is clearly against the weight of the evidence, and the further finding that said stunts were not daring or dangerous is against the weight of the evidence.

5. Errors of law occurring at the trial, namely:

(A) The ruling in substance by the Court that

acts done by agent corporations of defendant were not done by defendant.

(B) The interpretation of the offer in a strained and unnatural manner against plaintiff, when the offer was prepared by defendant, and the plain, reasonable meaning as contended for by plaintiff would give it life. The construction urged by the defendant and adopted by the court was one in favor of defendant and against the plaintiff and made it meaningless and a trick and snare.

6. The violation of Rule 33 of the Federal Rules of Civil Procedure by defendant in giving false answers under oath [67] to Interrogatories submitted to said defendant, namely to Interrogatories No. 10 and No. 11.

7. The violation of Rule 36 of the Federal Rules of Civil Procedure by defendant in giving false answers to Request for Admissions, namely to Request No. 3.

8. Plaintiff believes that in the circumstances and in view of the importance of the points of law involved, a new trial should be granted and consideration given to plaintiff's Amendments and Revisions of the Findings of Fact and Conclusions of Law.

With this Motion for a New Trial is filed a Motion to Amend and Revise the Findings of Fact and Conclusions of Law.

Said Motion for a New Trial will be made and based upon all the pleadings, papers and documents, including exhibits, on file, and the Minutes of the Court.

Wherefore, plaintiff prays that he be granted a new trial of said cause on a date to be provided by the Court.

Dated: October 8, 1953.

SAMPSON & DRYDEN and  
MORRIS L. MARCUS,

/s/ By JACOB SWARTZ, [68]

Acknowledgment of Service Attached. [69]

[Endorsed]: Filed October 9, 1953.

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[Title of District Court and Cause.]

MOTION FOR ATTORNEY'S FEES AND  
COSTS UNDER RULE 37(c)

Plaintiff Jules Garrison, pursuant to Rule 37(c) moves defendant Warner Bros. Pictures, Inc. to pay to plaintiff and to his attorney, Morris L. Marcus, reasonable expenses incurred and reasonable attorney's fees in making proof of matters of fact which said defendant denied under oath in response to Request for Admissions filed under Rule 36. Said facts and sworn denials are based upon plaintiff's Request for Admissions, numbers 3, 5, 7, 8, 9, 10 and 11. Plaintiff moves that he and his said attorney be awarded the sum of \$25,000.00 for reasonable counsel fees and the sum of \$600.00 for reasonable expenses incurred.

This Motion is based upon all of the records, files and pleadings in said action together with the

Affidavits attached hereto and such oral testimony as may be produced at the hearing. [70]

Dated: November 18, 1953.

/s/ MORRIS L. MARCUS,  
Attorney for Plaintiff

### NOTICE OF MOTION

Please Take Notice That the undersigned will bring the above motion on for hearing before the above entitled court in the courtroom of the Honorable Ben Harrison, Judge Presiding, at the United States District Court, in the Federal Building, City of Los Angeles, State of California, on Monday, November 30, 1953, at 10:00 o'clock a.m. in the forenoon of that day or as soon thereafter as counsel can be heard.

November 18, 1953.

/s/ MORRIS L. MARCUS,  
Attorney for Plaintiff

### Memorandum of Points and Authorities

#### I.

Where the defendant has failed to comply with the provisions of Rule 36 concerning the request for admissions, the court shall allow reasonable expenses incurred and reasonable attorney's fees to plaintiff and his attorney.

F.R.C.P. 36.

F.R.C.P. 37(c)

[71]



Affidavit in Support of Motion for Counsel Fees  
and Costs Under Rule 37(c)

State of California,  
County of Los Angeles—ss.

Morris L. Marcus, being first duly sworn, deposes and says: That he is attorney for Jules Garrison, plaintiff, in this proceeding; that a Request for Admissions under Rule 36 was duly prepared, served and filed in the above entitled case upon the defendant, Warner Bros. Pictures, Inc.; that in response thereto Warner Bros. Pictures, Inc. filed its Answer to Request for Admissions under Rule 36; that in its said Answer said Warner Bros. Pictures, Inc. made its denial of certain questions in said Request for Admissions, to wit: question numbers 3, 5, 7, 8, 9, 10 and 11; that thereafter plaintiff and his said attorney, Morris L. Marcus, were compelled to incur expenses and to spend a great deal of time and effort in working upon the proof of said facts; that said case came on for trial and plaintiff did produce proof of said facts at the trial of said case; that by reason of said [72] conduct of said defendant, plaintiff and his said attorney did incur the sum of approximately \$600.00 as reasonable expenses and plaintiff's said attorney thereby spent approximately 250 hours' of additional time in said case; that reasonable counsel fees by reason of the aforesaid is the sum of \$25,000.00.

Wherefore, plaintiff and his said counsel request said sums from defendant Warner Bros. Pictures,

Inc. under Rule 37(c) of the Federal Rules of Civil Procedure.

/s/ MORRIS L. MARCUS

Subscribed and sworn to before me this 18th day of November, 1953.

[Seal] /s/ FLORENCE S. MARCUS,  
Notary Public in and for said County and State.

My commission expires October 19, 1957. [73]

Affidavit of Service by Mail attached. [74]

[Endorsed]: Filed November 19, 1953.

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[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO MOTION  
FOR COUNSEL FEES AND COSTS UN-  
DER RULE 37(c)

State of California,  
County of Los Angeles—ss.

Eugene D. Williams, being first duly sworn, deposes and says: That he is one of the attorneys for the defendant Warner Bros. Pictures, Inc. in the above-entitled action, and makes this affidavit in response to the affidavit of Morris L. Marcus heretofore filed in support of motion for counsel fees and costs under Rule 37(c). That the Requests for Admissions referred to in the affidavit of Morris L. Marcus numbered 5, 7, 8, 9, 10 and 11 were and

each of them was answered truthfully and accurately by the defendant Warner Bros. Pictures, Inc., and that no evidence was offered by the plaintiff or otherwise proving or tending to prove the correctness of the statements made by plaintiff in said numbered Requests for Admissions, but on the contrary, the evidence clearly showed the truthfulness and accuracy of the defendant Warner Bros. Pictures, Inc., answers to such Requests for Admissions. In this connection, affiant states [75] that plaintiff was afforded full opportunity to examine all pertinent records of the defendant Warner Bros. Pictures, Inc. in connection with this case, was given an opportunity to see the motion picture "The Flame and The Arrow" and was also given an opportunity to and did examine such portion of the film of said picture as he desired under apparatus which enabled said plaintiff to slow down, stop and enlarge such frames of said film as he desired. All this was provided counsel for plaintiff prior to the answers by the defendant to said Requests for Admissions and counsel was fully in possession of complete information to the effect that the actor portraying the character "Dardo" in leading a group of horsemen riding hard through a forest during nighttime was Burt Lancaster; that Burt Lancaster did in fact discharge the arrow which purported to strike the hawk and plaintiff was apprised by defendant's answer to Interrogatory No. 7 that no person shot the arrow which in fact struck the hawk; that the person who did the sword fighting in the market place purporting to be

Burt Lancaster was Burt Lancaster; that Burt Lancaster did do all the feats of strength and skill depicted as having been done by the character "Dardo" and that Burt Lancaster did do all of the stunts depicted to have been done by the character "Dardo."

That the person in the motion picture "The Flame and The Arrow" portraying the character "Dardo" in the sequence where "Dardo" carrying "Rudi" is shown in a long shot running along the crest of the roof of a church or high building was not portrayed by Burt Lancaster, but was portrayed by a double, Don Turner. There is, however, another sequence immediately preceding that sequence in which Burt Lancaster in the character of "Dardo" does carry the midget depicting the character "Rudi" along the lower edge of the same roof and therefore in respect of that latter sequence the answer to the Request for Admissions is true, while in respect to the former sequence it is not true. The answer was prepared by affiant only after he had seen the picture several times, had interviewed Allan Pomeroy, the [76] Assistant Director of said picture, the chief film cutter, Billy Curtis the midget, and others who remembered that the scene had been enacted twice and that on one occasion Burt Lancaster had carried Billy Curtis along the crest of the roof, while at another time Don Turner had carried him. It was the then recollection of all persons interviewed by affiant that the scene which was actually used in the final film was that in which Burt Lancaster had portrayed the character

“Dardo” in that particular sequence, and it was only when Burt Lancaster’s deposition was taken by plaintiff that both plaintiff and defendant ascertained definitely that Burt Lancaster had not in fact been the one depicted in the film which was used in the picture. The defendant’s answer to Request for Admissions No. 3 was honestly made in good faith in the belief that it was accurate. The actual facts in reference to the matter were divulged to the plaintiff and defendant at the time that Burt Lancaster’s deposition was taken on January 18, 1952. It is therefore the fact that for approximately one and one-half years prior to the date of the trial the plaintiff and defendant were both in possession of the facts which would be established on trial in reference to the individual who in the character of “Dardo” had carried the character “Rudi” along the crest of the roof in the distant shot referred to.

Affiant therefore states that there were good reasons for the denial by the defendant of Interrogatory No. 3 at the time that said denial was made and that no harm or expense of any character was caused plaintiff for the reason that at least one and one-half years before the trial in connection with the taking of the deposition of Burt Lancaster, plaintiff learned the true facts and by whom they could be proved in respect of that matter.

In this case, the Court held that the action depicted showing the character “Dardo” in a distant shot escaping along the crest of the roof carrying

the character "Rudi" was not in fact a stunt. Consequently, the matter was of no substantial importance as it was [77] actually immaterial who portrayed the action so long as the action did not constitute a stunt.

Counsel refers to the fact that the matter of costs in this case has already been disposed of. On or about the 8th day of October, 1953, defendant served and filed its bill for costs, which was presented to the Clerk of this Court to be taxed on the 12th of October, 1953. Plaintiff filed no cross-bill. On October 23, 1953, the Clerk of this Court taxed the costs at the sum of \$498.92. On October 26, 1953, plaintiff made a motion to review the costs as taxed by the Court, which was noticed for hearing on November 9, 1953. On said November 9, 1953, said costs were re-taxed by Order of the Hon. William C. Mathes, Judge of the District Court, by striking therefrom an item of \$249.60 for reporter's fees. Throughout all of said proceedings no motion was made by the plaintiff to tax any costs on his behalf. Affiant therefore states that the time for taxing costs for the plaintiff and charging them against the defendant has now passed and that the current motion is too late.

Wherefore, affiant prays that said motion be denied.

/s/ EUGENE D. WILLIAMS,



for new trial denied, and motion to amend findings and motion for attorneys' fees and costs, heretofore submitted, are each denied.

EDMUND L. SMITH,  
 Clerk,  
 By MURRAY E. WIRE,  
 Deputy Clerk.

[80]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Comes Now the plaintiff Jules Garrison and hereby appeals from the whole of that certain judgment entered herein in the above entitled Court wherein it was adjudged that plaintiff take nothing, to the United States Court of Appeals for the Ninth Circuit.

Dated: This 21st day of January, 1954.

/s/ MORRIS LAVINE,

Attorney for Appellant, Jules  
 Garrison

[81]

Affidavit of Service by Mail attached.

[82]

[Endorsed]: Filed January 21, 1954.



[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL

Comes now the plaintiff-appellant in the above entitled cause and designates for inclusion in the record on appeal the complete record and all the proceedings and evidence in the action consisting of the following:

1. Complaint.
2. Answer of Warner Bros. Pictures, Inc.
3. Request for Answers to Interrogatories to Warner Bros. Pictures, Inc.
4. Request for Admissions.
5. Answers to Interrogatories.
6. Answers to Request for Admissions.
7. Findings of Fact and Conclusions of Law.
8. Judgment.
9. Motion for Amendment and Revision of Findings of Fact and Conclusions of Law.
10. Motion for New Trial. [83]
11. Motion for Attorneys' Fees and Costs Under Rule 37(c).
12. Order of December 28, 1953, Denying Motions to Amend Findings of Fact and Conclusions of Law and for New Trial.
13. All Exhibits.
14. Reporter's Transcript of Proceedings on Trial.
15. Notice of Appeal.
16. This designation.

Dated this 4th day of February, 1954.

/s/ MORRIS LAVINE,  
Attorney for Plaintiff-Appellant

Affidavit of Service by Mail attached. [85]

[Endorsed]: Filed February 5, 1954.

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[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME TO  
FILE RECORD AND DOCKET APPEAL  
AND ORDER THEREON

Comes now the plaintiff-appellant in the above entitled cause and moves the court for an order extending the time to file the record and docket the appeal for the following reasons:

The court reporter has given two estimates as to the cost of the transcript, one where leave is secured to prosecute the appeal on a typewritten record and the other in the event that the record will be printed which is considerably more costly. That consent to proceed on a typewritten record has not yet been secured and it may be necessary or desirable to print the entire record. The plaintiff personally has not sufficient funds to pay for the costs of the printing of the record but such funds will be secured from other sources. That at least three weeks additional time will be necessary to determine whether the case will proceed on a typewritten record or printed record and that the court

reporter will need at least thirty additional days within which to get out the transcript. [86]

Wherefore, plaintiff-appellant prays for an order extending the time an additional fifty days for the filing of the record and the docketing of the appeal.

/s/ MORRIS LAVINE,  
Attorney for Plaintiff-Appellant

### ORDER

Good cause appearing from the foregoing Motion;

It Is Ordered that the time for filing the record and docketing the appeal in the above entitled cause be, and it hereby is, extended to and including April 20, 1954.

/s/ BEN HARRISON,  
United States District Judge [87]

[Endorsed]: Filed March 1, 1954.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 87, inclusive, contain the original Complaint; Answer; Request for Answer to Interrogatories; Request for Admissions; Answer

to Interrogatories; Answer to Request for Admissions; Findings of Fact and Conclusions of Law; Judgment; Motion for Amendment of Findings of Fact and Conclusions of Law; Motion for New Trial; Motion for Attorney's Fees and Costs; Affidavit in Opposition to Motion for Attorney's Fees and Costs; Notice of Appeal; Designation of Record on Appeal and Order Extending Time to Docket Appeal and a full, true and correct copy of Minutes of the Court for December 28, 1953 which, together with the original exhibits and the Reporter's Transcript of Proceedings, transmitted herewith, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and seal of said District Court this 16th day of April, A.D. 1954.

[Seal]

EDMUND L. SMITH,  
Clerk,

/s/ By THEODORE HOCKE,  
Chief Deputy

In the United States District Court for the Southern District of California, Central Division

No. 12479-BH—Civil

JULES GARRISON, Plaintiff,  
vs.

WARNER BROS. PICTURES, INC., a corporation,  
DOE CORPORATION and ROE CORPORATION, Defendants.

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Tuesday, July 21, 1953

Honorable Ben Harrison, Judge Presiding.

Appearances: For the Plaintiff: Morris L. Marcus, Esq.; Sampson & Dryden, by Lowell L. Dryden, Esq., and Jacob Swartz, Esq. For Defendant Warner Bros. Pictures, Inc.: Freston & Files and Eugene D. Williams, Esq. [1\*]

Tuesday, July 21, 1953, 10:00 a.m.

The Court: Case on trial.

The Clerk: 12479, Jules Garrison vs. Warner Bros. Pictures for trial.

Mr. Dryden: Ready for the plaintiff.

Mr. Williams: Ready for the defendant.

Mr. Dryden: If the Court please, at this time we are going to, with the Court's permission, show the newsreel which the plaintiff contends is part

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\* Page numbering appearing at top of page of original Reporter's Transcript of Record.

of the offer and it has been suggested by counsel, again with the Court's approval, that the film can, at the conclusion of the hearing be marked as an exhibit and returned to Warner Bros. with the understanding it will be returned to the Court any time the Court so desires. Is that agreeable?

The Court: That is satisfactory.

Mr. Dryden: Then for the purpose of the record, we will ask that the newsreel——

The Court: As I understand these films are very volatile and should be kept in some fireproof vault. Is counsel willing to stipulate they may be returned subject to the further order of the Court in the case of an appeal.

Mr. Williams: Yes, your Honor, and the same stipulation we are prepared to ask for in the case of the picture itself, which is nine cans of film. I understand counsel are agreeable [3] to that.

Mr. Dryden: That is correct.

Mr. Williams: And if during the course of the trial it should be desired by either counsel or the Court that any part or all of either of the films should again be shown in court we will produce them on an hour's notice.

Mr. Dryden: I believe we have a further stipulation, your Honor, to the effect that this newsreel that is about to be shown, together with the nine cans of film constitute the actual portrayal that was shown to the public in the theatres.

Mr. Williams: That is correct. May I sit over here?

The Court: You are only going to show that part of the newsreel that pertains to this case?

Mr. Williams: Yes. In fact that is all we have. The rest of the newsreel in which this appeared was, in the course of business, destroyed, but this was retained for the purposes of this case. With your Honor's permission I will get over here and get a seat in the audience.

The Court: So long as you pay an admission fee it will be all right.

Mr. Williams: I have already paid my fee, your Honor.

Mr. Swartz: Is that camera angle visible to your Honor?

The Court: What is that?

Mr. Swartz: Is that angle of the screen all right for [4] your Honor?

The Court: It is all right so far as I am concerned.

The Projectionist: Is the Court waiting on me?

The Court: Yes.

The Projectionist: I didn't know. Shall we shut off the lights?

(The lights of the courtroom were shut down and the newsreel was run.)

Mr. Dryden: At this time, if the Court please, we would like to offer the can containing the film just shown to your Honor as Plaintiff's Exhibit 1.

The Court: It will be marked Plaintiff's Exhibit 1, subject to the stipulation heretofore made.

(The article referred to was marked Plaintiff's Exhibit 1, and was received in evidence.)

Mr. Dryden: Now, at this time we are going to ask that the projectionist show your Honor the film *The Flame and the Arrow*, and if it will be of any assistance to the Court I can point out the scenes that the plaintiff is particularly interested in in this matter, if that will be of any assistance.

The Court: Counsel, I want to know the parts you claim are not bona fide.

Mr. Dryden: That is what I am referring to, your Honor. There are a number, and I will take them in the order of [5] of sequence they are shown.

The first one, and the one that is not so important as the later ones, is the sequence showing the shooting of the hawk or the falcon while the bird is in flight.

The next one in the sequence of events which follows the shooting—

The Court: Can't we slow the camera down at these particular points, so that I can get a better understanding of the sequences?

Can you slow it down in any way?

The Projectionist: Yes, I can slow it down to a certain extent. Of course, I can't slow it down too much. Of course, the sound will be off, but you are not particularly interested in the sound.

Mr. Dryden: So that your Honor can follow it, the next one is the sequence where the character Dardo, who is portrayed by Burt Lancaster in many of the scenes, is in the court yard at the time the falcon comes in on his horse with the



two ladies, one of whom is the mother of Rudie, and Rudie being Dardo's son.

At that time, after Burt Lancaster or Dardo shoots this hawk or the falcon, as he may be described, the villain Ulrich, orders the soldiers to seize the character Dardo, and at that time there is a scuffle that occurs there, at which time Dardo, the leading man, and generally portrayed [6] by Burt Lancaster, is shown going up to a roof with his son. His name is Gebert, I believe, and he is the character Rudie in the picture.

Then there is the sequence where the soldiers are chasing them across the top of this pointed roof. Now, that particular sequence we contend, your Honor, and the important one in this litigation, is portrayed by Don Turner, a stunt man, who is carrying with him a midget by the name of Billie Curtis, Don Turner portraying the character Dardo, which is generally the lead portrayed by Burt Lancaster and Billie Curtis, the midget, portraying the character of Rudie, the son of Dardo.

The next sequence and I may be mistaken—I don't have this exactly in mind, but in any event there is a sequence in which a character by the name of Papa Pietro is about to be hung by reason of the instructions in effect from the villain Ulrich.

Dardo is in the forest with his henchmen and they undertake to rescue Papa Pietro, who is about to be hung, and they mount on horseback and they have made up home-made spears, as they have no better equipment, those spears consisting of sap-

lings with the various limbs cut off so that it gives them spears.

The sequence we are particularly interested in is that sequence where they come into the courtyard to rescue Papa [7] Pietro and the character Dardo at that time is portrayed, we contend, by Don Turner in the hand to hand fighting that occurs there with the saplings. And further where he jumps up and cuts Papa Pietro loose into the ox cart and then flees the scene of the purported or prepared hanging with Papa Pietro.

That is described in the sequence as the character Dardo and we contend that was Don Turner in that sequence.

The next one in the sequence of events is, of course, the duel between Allesandro, who is for all purposes a henchman of Ulrich, the villain, and he engages in an extensive duel with Dardo in the castle at which time Allesandro is killed by the character Dardo and in that sequence likewise, we likewise contend it is played by Don Turner.

I think that covers it. Oh, yes, there is one thing I overlooked. While he is doing that there is also some sequences in here with relation to acrobatics that were performed by the character Dardo and we do not contend that the acrobatics as such were not performed by Burt Lancaster but we contend the nature of the film as shown to the public indicated that these acrobatics were being done at a great height and that actually the filming of the picture was done through mirrors and

the acrobatics as such were being done at a relatively low height thereby decreasing the hazard.

(Whereupon the motion picture was shown.)

The Projectionist: It is going to be a slow process, each reel.

Mr. Dryden: If the Court please, the sequence about to start in this second roll of film relates to the endeavor to seize the son, Rudie, and the flight across the roof that I referred to in the original instance.

The projectionist tells me that he can run that through at a normal pace, and then can stop it and run it through at a slower pace. If the Court wants me to give him that instruction, I will do that.

The Projectionist: I can't change the pace very much. This machine is almost a fixed speed.

The Court: We can find out after I see it.

Mr. Dryden: At the conclusion of the sequence over the top of the roof, if you will stop it, Mr. Projectionist, and we will find out what the Court desires.

The Projectionist: All right.

(The portion of the film referred to was projected.)

Mr. Dryden: If the Court please, the only part of that sequence we contend was played by a double is the sequence, camera right to camera left, running across the top of the roof.

The Court: I think you had better play it over again, and slower, and you stand over there, and point out what you claim. [9]

The Projectionist: How many feet do you want to go back,—about 100 or so? I am not trying to be technical, but I want to know.

Mr. Dryden: I can't say, but approximately where the boy is thrown up on the roof after they get away.

The Court: It only takes a minute for the whole thing.

The Projectionist: I think we might as well re-thread the whole thing, if that is satisfactory.

The Court: Yes.

The Projectionist: I can apply some friction to the fly-wheel, and slow this down quite a bit at any time you wish.

(The portion of the film referred to was re-projected.)

(Changing reels.)

The Court: How much longer is it going to be?

The Projectionist: There are nine reels; this is the third.

Mr. Williams: May I suggest, I think the sound is very low. I can't hear it at all.

The Court: That isn't really an issue in the case.

Mr. Williams: Except you get an idea of what the picture is about.

The Court: It might be entertaining but we are not here for entertainment purposes.

Mr. Williams: I know that. This is only about the [10] fourteenth time I have seen the picture. I am just curious to see what it is like.

(Operating changing reels.)

The Court: How near are you through? How many reels is that?

Mr. Dryden: What reel was that?

The Projectionist: 2-B, the fourth reel, the fourth single reel.

The Court: How many did you say there were?

The Projectionist: Five more on the table.

Mr. Dryden: There is no way, at least that I know of, your Honor, that we can select these to save your Honor's time. I have read the transcript——

The Court: Are there any more stunts from now on?

Mr. Dryden: Yes, there are several scenes relating to the stunts insofar as we are concerned. I don't know what can they are in and therefore I can't exclude them. I will just have to ask your Honor to bear with me in that respect.

The Court: We will take one more reel and then recess until this afternoon.

(The film referred to was projected.)

The Court: We will take a recess until 2:00 o'clock. That is about halfway through?

The Projectionist: Just about, yes. [11]

The Court: How much longer is it going to take? Another hour?

The Projectionist: I would say another hour. We have probably 48 minutes of film to run, and it will take me about four minutes to change reels.

The Court: We will take a recess until 2:00 o'clock. I am going to ask counsel: How do you

expect me to figure from these pictures what is fake photography and what is real.

Mr. Dryden: Your Honor, with relation to the sequences I have pointed out, and will point out, we will have testimony here with relation to those sequences, and how they were actually filmed, and who the characters were that portrayed themselves.

(Whereupon, at 11:45 o'clock a.m. a recess was taken until 2:00 p.m. of the same day.)

Tuesday, July 21, 1953, 2:00 p.m.

The Court: Proceed, gentlemen.

Mr. Dryden: If the Court please, this next scene is the one that we contend was performed by Don Turner, the stunt man, in the fight that took place in the court yard, in the rescue of Papa Pietro.

(The projection was continued.)

Mr. Dryden: It was that sequence there, beginning with the drive into the court yard, including the cutting down of Papa Pietro, and that scene is one we claim to have been performed by a stunt man in the character Dardo.

(The projection was continued.)

The Projectionist: This is the last reel coming up.

The Court: That's too bad.

Mr. Dryden: If the Court please, this next sequence, we contend the sword fight between Dardo and Alessandro is played by a stunt man or an extra, instead of Mr. Lancaster.

(The projection was continued.)

Mr. Dryden: Particularly, this next sequence, your Honor, with relation to the arrow shot by the character Dardo, we contend that was not made by him, but was made by a double.

(The projection was continued.)

Mr. Dryden: Now, in this next sequence, your Honor, we [13] contend that the acrobatics performed here were performed by Lancaster, but that these are the glass shots that I referred to, that distort the picture with relation to depth and distance.

(The projection was continued.)

The Court: Do you dispute that Lancaster performed that last stunt, counsel?

Mr. Dryden: No, we do not dispute that.

The Court: I didn't think you would miss that, anyhow.

Mr. Dryden: We certainly don't dispute it, so far as we are concerned, your Honor.

Now, at this time I would like to offer in evidence the nine reels.

The Court: I think it was stipulated this morning that they would be in evidence, and would be retained by Warner Brothers.

Mr. Dryden: That would be what number?

The Clerk: Plaintiff's No. 2, the nine reels of the picture.

(The articles referred to, marked Plaintiff's Exhibit No. 2, were received in evidence.)

Mr. Dryden: Does the Court desire to take a recess while I assist this man to get his equipment out of here?

The Court: I wondered if you wanted to take the equipment out of here. There may be certain stunts they may want [14] to play again. I would like it out of the way while we take the evidence, of course; that is, out of the Court's view, but it may be on some of these stunts that they may want to rerun them.

We will take a recess of five minutes at this time, so that you can get the room so that you can see the witnesses.

(A short recess was taken.)

The Court: I want it understood when I say a five-minute recess around this courtroom I mean five minutes. That applies to counsel, the bailiff and everybody else. You may proceed.

Mr. Dryden: Call Mr. Evelove.

### ALEX EVELOVE

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Alex Evelove.

The Court: Gentlemen, as I understand this case, it really should be divided into two parts, first, whether or not Mr. Lancaster performed the stunts here and, secondly, whether there was an offer and I think inasmuch as you have started first with the picture that we had better take up and complete that phase of the case.

Mr. Dryden: Then I will ask permission to withdraw this witness because he has nothing to do with that particular [15] aspect.



(Testimony of Alex Evelove.)

The Court: I was wondering how counsel would like to handle that. Of course if there is no offer by Warner Bros. we are not concerned with the other.

Mr. Dryden: That is right.

The Court: And if there was an offer, why, then we are concerned with the other.

Mr. Dryden: Well, I thought perhaps in this situation it would be good to continue the continuity of events. Of course your Honor was kind enough to let us put this on out of order. As you saw, a good deal of equipment was necessary.

So far as I am concerned I would recommend that we go into the question of the offer.

The Court: That is satisfactory.

Mr. Dryden: And resolve that issue.

The Court: Do you have any objection?

Mr. Williams: I have no objection either way, your Honor.

#### Direct Examination

Q. (By Mr. Dryden): Mr. Evelove, will you state your occupation?

A. My present occupation is that of a free lance publicity agent.

Q. Directing your attention back to 1950 and prior thereto, what was your occupation?

A. Studio publicity director for Warner Bros.

Q. And at the time that the picture *The Flame and the Arrow* was made for how many years had you been director of publicity for Warner Bros. Studio? A. In 1950 it was nine years.

(Testimony of Alex Evelove.)

Q. Nine years?           A. Yes, nine years.

Q. Now, your function in that respect was to publicize pictures that were about to be shown by Warner Bros. Studio?

A. Publicize the products of the studio and people under contract to the studio.

Q. And likewise any pictures that were being distributed through the studio, is that correct?

A. Yes, sir.

Q. Now, with relation to the particular film involved here, *The Flame and the Arrow*, did you have charge of the publicity as related to that picture?

A. I executed that publicity, yes.

Q. And relative to the question of this particular reward that has been referred to, where did you first receive your instructions relative to publicity relating to that factor?

A. From our New York office.

Q. That is the New York office of Warner Bros. Studios as such? [17]

A. Warner Bros. Pictures, Inc., yes.

Q. That was communicated to you either in writing or by——

A. I don't remember the exact method of transmission but it would have been by teletype, telephone or correspondence.

Q. And in that respect were you instructed by Warner Bros. to concentrate on the aspect of Burt Lancaster having done the stunts in that particular picture?

(Testimony of Alex Evelove.)

A. We had started before that particular stunt to publicize the fact that Mr. Lancaster did perform his acrobatic stunts.

Q. I see. And then subsequent to publicizing that the question of offering a reward was suggested to you by the New York office of Warner Bros., is that correct?

A. That was to focus attention further on the campaign we had already started to prove that he did those things.

Q. And with relation to that particular publicity, that was prepared in your department at Warner Bros. Studio, is that correct?

A. Yes, sir.

Q. And directing your attention to the newspaper stories relating to the reward offered in this picture, was that likewise prepared under your direction?      A. The releases were prepared.

The Court: That is calling for a conclusion of the witness. [18] Couldn't you show him the newspaper clippings and ask him about those. I have a couple of them that were furnished to me.

Mr. Williams: There is a difference between a newspaper clipping and a news release.

The Witness: That was the point I was going to make.

Mr. Williams: Clippings are not prepared by the publicity man. Those are prepared by some newspaper reporter.

The Court: I simply want to know if he furnished any of this information.

(Testimony of Alex Evelove.)

Mr. Williams: He furnished what is known as the press release. As to those matters we agree with your Honor they should be shown to the witness and identified.

The Court: Well, if they have the press release. Have you?

Mr. Williams: Yes.

Mr. Swartz: May I have the clippings, your Honor, please?

The Court: You can have these two.

(The documents were handed to counsel.)

Q. (By Mr. Dryden): Mr. Evelove, I want to show you what purports to be a photograph and a newspaper, and ask you if you have ever seen that before.

A. I don't know what newspaper it is from.

Mr. Williams: I can't hear you, Mr. Evelove.

The Witness: Oh, I see it now, however, it is from the [19] Mirror. I have seen the story.

Q. (By Mr. Dryden): Was that story that is set forth in the Mirror one of the—I believe you call them plants, so far as publicity is concerned?

Mr. Williams: That is objected to, if your Honor please, on the ground that the story that appears in the newspaper is obviously written by the newspaper. We have handed counsel—

The Court: I don't know whether they are or not, counsel. A good many people write up their own articles.

Mr. Williams: I don't know of any newspapers that publish them.

(Testimony of Alex Evelove.)

The Court: I have read a good many that other people have written, and they have admitted it.

Mr. Williams: We have no objection to his asking this witness whether he read that, but saying, "Is this one of your plants?"

The Court: I will agree with you on that.

Mr. Dryden: All right. Let me reframe the question.

Q. (By Mr. Dryden): Was the continuity as set forth in that article in the *Mirror* prepared out there at Warner Brothers Studio?

A. I can't answer the question as it is worded.

The Court: How about the photograph there?

The Witness: The photograph is provided by the studio, [20] yes. That was made in a vault of the Bank of America, I believe, in Culver City, at the time the newsreel was shown.

I may be able to explain that all publicity departments, publicity agencies, trying to get news into newspapers and magazines, prepare releases and copy, and that copy is then sent to the desired outlet. And, first of all, the press agent hopes it will be run substantially as sent, and he waits until the paper comes out to find out whether it did.

As I remember the original piece of copy which we did release, there is a variance in language in this particular newspaper's version of it.

Q. (By Mr. Dryden): You refer to a variance. Would you indicate in what respect?

(Testimony of Alex Evelove.)

The Court: Why not have that release? Why not submit the release?

Mr. Dryden: May I have this marked for identification, your Honor, as Plaintiff's Exhibit 3?

The Court: Yes.

The Clerk: Plaintiff's 3, for identification.

(The document referred to was marked Plaintiff's Exhibit 3, for identification.)

Q. (By Mr. Dryden): With relation to that Plaintiff's Exhibit 3, for identification, subsequent to your seeing that photograph and that article, did your department ever take any steps to repudiate that article? [21]

A. Not that I know of.

Q. Now, I show you here what purports to be a release, and ask you if you will identify the five typewritten sheets, and tell us what they are.

Mr. Williams: May I say that I think counsel was inadvertently in error. I don't think that purports to be a release. I think it purports to be several releases.

Mr. Dryden: All right. Thank you.

The Witness: This top sheet is an original release, or, rather, a carbon of an original release in connection with the offer, and I think that an examination of the copy as it appeared here and in the Mirror will show the discrepancies.

Q. (By Mr. Dryden): Now, take a look at the second sheet, and I will ask you if you recognize that?

A. Yes, I do.

Q. And will you look at the third sheet?

(Testimony of Alex Evelove.)

A. Yes.

Q. Is that a release?

A. That is a release.

Q. From the studio?

A. From the studio.

Q. All right. And the fourth sheet?

A. Well, that is the same as the first one.

Q. I see.

A. It is a different copy of it. [22]

Q. You have examined all five of these sheets, and you recognize them as being released or duplicate releases, for lack of a better description, that came out of the publicity department of Warner Bros. Studio, relating to this movie; is that correct?

A. Yes. As a matter of fact, this one (indicating) was one of the earliest ones, if I remember correctly.

The Court: Will you put a number on it, counsel? Is that No. 2?

Mr. Dryden: This would be No. 4.

The Court: Then mark it No. 4.

The Clerk: Do you want it marked Exhibit No. 4?

The Court: No, just have it numbered there.

Mr. Williams: I understood the number your Honor referred to was the number on the pages?

The Court: Yes, the number on the pages.

Mr. Dryden: I see. I will number the pages.

Q. (By Mr. Dryden): Now, it appears that you were referring to page No. 2?

A. Yes, pages 2 and 3 are actually the same

(Testimony of Alex Evelove.)

story in two versions, a short and a long, and they preceded the page 1 copy by a couple of weeks, and it was our first item following the affidavit which had been signed by all of these veteran so-called stunt men.

Mr. Dryden: All right. I would like to offer this in [23] evidence, the five sheets.

Mr. Williams: May the fifth sheet be taken out? There is no necessity for the fifth sheet. He said that is a copy of the first sheet.

Mr. Dryden: All right. Then I will offer in evidence the four sheets, and return the fifth sheet.

The Court: They will be introduced as one exhibit.

The Clerk: Exhibit 4.

(The documents referred to were marked Plaintiff's Exhibit 4, and were received in evidence.)

[see page 307.]

Q. (By Mr. Dryden): Now, with relation to the question of the newsreel, was it contemplated by your department that you would publish a newsreel that would relate to this reward relative to Burt Lancaster in the picture *The Flame* and *The Arrow*? A. Yes, we did.

Q. And in accordance with that, did you prepare a newsreel continuity to be used in that newsreel? A. Yes, we did.

Q. Now, I show you here what purports to be a newsreel script, which has been marked Plaintiff's Exhibit 3, for identification, in a deposition,



(Testimony of Alex Evelove.)

and ask you if you recognize that as being the newsreel continuity prepared by your department at Warner Bros. studio here locally?

A. No, I do not. [24]

Mr. Williams: May I look at that just a moment? This was in connection with the deposition of a different witness.

Mr. Dryden: All right.

Mr. Williams: However, if you please, counsel, in order to save you time and trouble, I have the copies of the newsreel scripts that were produced by this witness at the time his deposition was taken.

Mr. Dryden: All right.

Mr. Williams: And which I am sure he can identify.

(The documents were handed to counsel.)

Q. (By Mr. Dryden): I will show you here what purports to be a newsreel script. It says, "O.K.ed by Mr. Ombringer 7-11-50." Do you recognize that as being the original transcript that was produced?

A. Yes, this is the original.

Mr. Dryden: All right. We will offer that in evidence as Plaintiff's next in order.

The Clerk: Exhibit 5.

(The document referred to was marked Plaintiff's Exhibit 5, and was received in evidence.)

[See page 311.]

Q. (By Mr. Dryden): Now, with relation to

(Testimony of Alex Evelove.)

this newsreel, after it was published and released for publication, you had occasion to observe it, did you not?      A. Yes, I did.

Q. Will you take a look at this document that is [25] captioned, "Actual newsreel script," and I will ask you if you recognize that as being the continuity and the dialogue that was used, and the actual script that was released to the public?

Mr. Williams: Just a moment, if your Honor please. In order to save confusion I have that particular document marked as an exhibit which was made an exhibit at the taking of the deposition of this particular witness.

I think it would be easier for the witness to identify this one rather than the one that counsel is now producing, which is another copy from the deposition of another witness.

Mr. Dryden: Are these identical copies?

Mr. Williams: I don't know as to that because I wasn't present when you took the deposition to which that was attached, but the one that I have now produced, which is attached to the deposition of—which was identified at the taking of the deposition of Mr. Evelove, is the one which the studio produces as the correct manuscript.

Mr. Dryden: Thank you, counsel.

Q. (By Mr. Dryden): I now show you in accordance with Mr. Williams' recommendation, a document captioned "Actual Newsreel Script." Do you recognize that as being the continuity of the

(Testimony of Alex Evelove.)

dialogue of the script that was actually released in the Warner Bros. newsreel scenes?

A. I don't remember word for word what the newsreel [26] copy had or the dialogue. I remember——

The Court: Do you know, Mr. Williams?

Mr. Williams: Yes, I know.

The Court: Why can't that be stipulated?

Mr. Williams: I shall be very happy to stipulate to it.

Mr. Dryden: I will accept the stipulation and offer this as plaintiff's next in order.

Mr. Williams: I may say that this was produced by having a stenographer take the language from the newsreel and transcribe it.

The Court: That we saw this morning?

Mr. Williams: Yes.

The Court: It will be received.

The Clerk: Plaintiff's Exhibit No. 6.

(The document referred to, and marked Plaintiff's Exhibit No. 6, was received in evidence.)

[See page 313.]

Q. (By Mr. Dryden): Now, Mr. Evelove, as I understand it the purpose of this publicity relative to the reward and the continuities prepared by your department, were for the purpose of convincing the public that Burt Lancaster had done all of his own stunts in this film, is that correct?

A. We wanted to prove that perhaps not since Douglas Fairbanks had there been an actor who

(Testimony of Alex Evelove.)

could do the acrobatic stunts that Mr. Lancaster can do and that was the whole purpose [27] of the campaign.

Q. And that was to prove that he himself had done them rather than someone else, is that correct?

A. That is right. And the film was photographed, as I remember, so that the camera would be on Mr. Lancaster when he did the acrobatic stunts so that the publicity and the stunts and everything would jibe.

Q. Now as I understand it, insofar as the preparation, at least, of the original transcript was concerned, in working with Warner Bros. publicity department you considered that to be a bona fide offer with relation to the reward that was set forth?

Mr. Williams: If your Honor please, that is objected to as calling for a conclusion and speculation on the part of the witness and is not relevant nor material to the case.

The Court: Well, I think the objection is good, what he intended, so far as that is concerned. The publicity speaks for itself, counsel.

Mr. Dryden: Probably so, your Honor. Thank you.

The Court: I don't think his expression as to what he intended would be material. It might be falsely represented.

Q. (By Mr. Dryden): In other words, when this publicity was released you didn't intend it to be a joke or anything of that nature? You con-

(Testimony of Alex Evelove.)

sidered it to be a legitimate representation? [28]

Mr. Williams: That is objected to, if your Honor please, as not relevant to the issues involved in the case and calling for conclusions and speculation on the part of the witness and is immaterial.

Mr. Dryden: In the interrogatories they take the position, as I gather, that it was never intended——

The Court: Counsel, I don't know. I may be wrong in my approach to this case, but it seems to me it is immaterial whether he was joking or not. If he was fooling the public when making such an offer, whether it was a joke or not, and somebody took it up, why, I don't care how much he was joking. They can put out joking advertising if they want but they may have to pay for it.

Mr. Dryden: All right.

Mr. Williams: If your Honor please, it goes farther than that. It is neither the intention of the offerer or the offeree undisclosed that counts. It is the language of the offer and the acceptance.

The Court: That is what I understand. If they made an offer and it was accepted——

Mr. Williams: Regardless——

The Court: Regardless of the purpose?

Mr. Williams: Yes. Incidentally, before we proceed, may I interrupt to this extent? Was this last script which was marked as a transcript, which was described as a transcript [29] of the actual newsreel, was that marked and received, in evidence?

(Testimony of Alex Evelove.)

The Court: Yes.

Mr. Files: Was that Exhibit 6?

The Clerk: That is right.

Q. (By Mr. Dryden): Now, Mr. Evelove, you saw the newsreel that was published when it was returned here from New York, isn't that correct?

A. Yes, sir.

Q. And you listened to the continuity of that newsreel as it was portrayed to you, isn't that correct?

A. Well, I saw the newsreel, yes.

The Court: Where are the newsreels prepared? Are they prepared in New York?

The Witness: Yes, sir. They are filmed all over the country and all over the world but they go into New York for editing and from there they are distributed to the subscriber theatres.

The Court: In this particular newsreel, did you send the material to New York yourself?

The Witness: Yes; we shipped the film footage and the copy which reproduced the original release on the offer, the language.

The Court: And sent it to the New York office?

The Witness: Sent it to the New York office, yes. [30]

The Court: What office?

The Witness: The newsreel office. I don't remember the address. Warner-Pathe News.

Q. (By Mr. Dryden): Did you send it to Warner-Pathe News or send it to Warner Bros. in New York and they in turn delivered it to Warner-Pathe?

(Testimony of Alex Evelove.)

A. The usual procedure is to send the newsreel footage to the newsreel office with a wire and also a covering wire to Warner Bros. publicity department in New York so they would know it was there.

Q. Then so far as you know in this situation, this was sent to Warner Bros. newsreel and a copy sent to Warner Bros. theatres, is that correct?

A. As a matter of fact I know it was because the newsreel photographer did the actual shipping. I believe he took it to the airport and he put the copy and the transcript in the proper language and shipped it to New York himself.

Q. Then did you have a man arrange—did you arrange for a man to come out here from Warner Bros. newsreel to take the actual pictures here of Burt Lancaster?      A. Yes, we did.

Q. And then he shipped the film and the copy on back?      A. That is right.

Q. So you know that the copies went both to Warner Bros. newsreel and Warner Bros. Inc.?

A. Yes. Pardon me, I don't know that copies went to Warner Bros. Pictures, Inc. I know that the newsreel man sent the material to the newsreel company and our wire to the home office was usually to the extent that such and such a subject has been shipped to the newsreel company.

The Court: You say "usual." Do you know whether this was done in this case? Say yes or no. Do you know?

(Testimony of Alex Evelove.)

The Witness: I can't say for a fact one way or the other, sir.

Q. (By Mr. Dryden): Now, insofar as this Warner Bros. newsreel is concerned, you are familiar with that organization as it relates to Warner Bros. Theatres, aren't you?

Mr. Williams: Now just a minute.

The Witness: Yes.

Mr. Williams: We are perfectly willing to stipulate and agree as to what the relationship between the two companies is and as to the names of the companies, which have been misstated by counsel. But I certainly object to this witness giving his speculation as to what—

The Court: You say you can stipulate. What can you stipulate to?

Mr. Williams: We have already stipulated to it in our interrogatories but the answer is that this newsreel—the Warner-Pathe Newsreel is put out, prepared, made and put out by a company called Warner News, Inc., which is a wholly [32] owned subsidiary of Warner Bros. Pictures, Inc. In other words, Warner Bros. Pictures, Inc. owns the entire issued capital stock of Warner News, Inc.

We have stated that in response to an interrogatory. That is the fact and there is no need of taking any time with it.

Mr. Dryden: What about the officers, counsel? Can we stipulate as to the relationship of the officers?



(Testimony of Alex Evelove.)

Mr. Williams: I think Mr. Mornay (phonetic) is president of Warner News, Inc. There is a vice-president and secretary also. I don't know of any of those officers who are officers of Warner Bros. Pictures, Inc.

Mr. Dryden: Are any of the Warner Brothers as such officers of Warner Bros. Pathe News?

Mr. Williams: No, no. Warner News, Inc. I understand that none of them are officers.

The Court: Gentlemen, there has been a question if it is all right to take these films back to Warner Bros. We don't want them in this building. They are too dangerous to have around.

Mr. Dryden: We agreed subject to your approval with relation to the equipment.

The Court: I understand they can be back here in an hour or so.

Mr. Williams: We can have them back in an hour any time. [33] May we have the man take them out now without inconveniencing the Court? I think he has a small truck here.

The Court: Yes.

(Films removed from the courtroom.)

The Court: You may proceed.

Q. (By Mr. Dryden): Now, you state that at the time that this newsreel was returned to Los Angeles, relating to this offer, you observed that, is that correct?

A. I saw the newsreel, yes.

Q. And you saw it at the Warner Bros. Pictures, Inc. studio, is that correct?

(Testimony of Alex Evelove.)

A. That is right.

Q. And after observing that and listening to that continuity did you make any change in the continuity as it was then given by the newsreel?

A. I don't—I am quite sure I didn't notice the language of the newsreel.

Q. Well, the question that I am putting to you is this: Were there any changes made from the continuity that was sent back on that newsreel from Warner News, Inc. to Warner Bros. here in Hollywood before it went out to the public?

A. No, sir.

Q. Was there ever any change made with relation to that continuity that was sent out with the newsreel from [34] Warner News, Inc. to Warner Bros. Pictures, Inc.?

A. Not to my knowledge.

The Court: Gentlemen, I haven't read the answers to the interrogatories. They haven't been introduced in evidence. But as to the nature of this publicity and the handling of it to the publicity department, can't those steps be stipulated to?

Mr. Williams: I think they are all set forth in the answers to the interrogatories, your Honor.

The Court: They are not in evidence and I was just wondering about them. They are asking questions of this witness that it seems to me the defendant in this case should know what the facts are.

Mr. Williams: Certainly, and so far as they are facts we are willing to stipulate to them.

(Testimony of Alex Evelove.)

The Court: I was wondering if you couldn't cover at least some of these facts by stipulation rather taking the time to question the witness and build up a large transcript for this reporter.

Mr. Williams: I have no objection to making a large transcript for the reporter but I trust the Court would just as soon save a little time.

The Court: Of course your client pays the bill.

Mr. Williams: You know, I was nourished and educated on court reporter fees so I have to have a soft spot in my [35] heart for a court reporter.

The Court: I have, too, but I have got something else to do besides listen to questions and answers that there is no dispute about.

Mr. Williams: I am sure, your Honor, if counsel will ask us to do so I haven't the slightest doubt but what we can stipulate to many of these facts and save time.

The Court: Are these matters all covered by interrogatories?

Mr. Williams: Yes, they are all covered.

Mr. Dryden: No, they are not.

The Court: Then why don't you introduce the interrogatories into evidence?

Mr. Swartz: Some of them we don't want introduced and some of them we do. I would say this, that Mr. Williams is a very busy man and your Honor will recall I made diligent effort to try to get a stipulation from Mr. Williams over a period of three years. He said he would put it

(Testimony of Alex Evelove.)

in the pre-trial stipulation with the rest and we can try it out.

If he wants to tell us that we can stipulate I will make further effort to do so.

The Court: I have found out from experience that Mr. Williams doesn't stipulate to anything unless he has to.

Mr. Williams: I only stipulate when I believe it to be a fact and when counsel asks us to stipulate to something [36] that I do not believe to be a fact I decline to stipulate.

The Court: I know but—

Mr. Williams: As to this matter, I have already placed the answer in my answer to the interrogatory.

The Court: But they are not in evidence.

Mr. Williams: If counsel will propose a stipulation and if I think it is correct I will agree to it—if I don't I won't agree to it.

The Court: What do you expect to prove by this witness?

Mr. Dryden: I expect to prove that he was the publicity director of Warner Bros. Pictures, Inc.; that in conjunction with the publicity relating to this picture and on behalf of Warner Bros. Inc. and at the direction of the New York office, the plan was conceived wherein and whereby they would offer a reward of \$1,000,000 to any person viewing the film that could prove that all of the stunts were not performed by Burt Lancaster.

I proposed to prove by him insofar as I can, that

(Testimony of Alex Evelove.)

Warner News, Inc., as has been stipulated, is a wholly owned subsidiary of Warner Bros.; that they are for all practical purposes, one and the same identity and that under this procedure these films are sent to Warner News, Inc., returned to them, at which time in his capacity as publicity director he heard the continuity as it went to the public; that there was no change made in the continuity or the reward offered in the continuity [37] and it was released to the public with the identical language that was used as returned to them by Warner News, Inc.

Mr. Williams: I can't stipulate to that.

The Court: We will proceed. Proceed, gentlemen.

Mr. Williams: I can stipulate to some of the **facts**.

The Court: What facts can you stipulate to?

Mr. Williams: I cannot stipulate to conclusions. The facts that I am able to stipulate to, your Honor, I can give your Honor in concise language by referring to certain paragraphs in the answers to the requests for admissions, if your Honor will give me just a moment to do that.

The Court: Well, let us proceed with the evidence, counsel. I am not going to wait around. You can't get any stipulation out of Mr. Williams. I have been trying for three years in this case to get down to a point where we could simplify the issues but I haven't had any co-operation at all.

Q. (By Mr. Dryden): Mr. Evelove, it is true,

(Testimony of Alex Evelove.)

is it not, that when this newsreel is returned to you by Warner News, Inc., that you review it and then it is released to the public?

A. That is not true, sir. I do not review it, if I understand the term "review."

I look at it as an established fact as everyone else in the studio does when it comes in, which is two or three days after it has already been released in the East.

Q. Let me interrupt you one second. As you get the [38] continuity it comes back here to the West Coast within two or three days subsequent to its release in the East? A. Yes.

Q. And at that time you listen to it and observe it, is that correct, at the studio?

A. I look at it, yes, sir.

Q. And that is part of your job as publicity director, isn't that correct?

A. It was not part of my job. I probably could not have looked at the newsreel at any time but I was interested in looking at them.

Q. In this particular case you did look at them?

A. Yes.

Q. And then that was released for local distribution here in Los Angeles without any change or alteration in the continuity as it was returned to you, is that correct?

A. May I explain distribution of newsreels so far as I understand them here?

Q. I am talking about Los Angeles. I would

(Testimony of Alex Evelove.)

like to confine myself to this newsreel in Los Angeles.

A. That is what I am talking about. The exchange, which is the distribution center for film, gets the newsreels from New York and distributes them immediately on receipt, to theatres. It is possible that at the studio we will not get a release until it has already gone into the local [39] theatres, the Los Angeles theatres, that is, so I can't tell for a fact whether I saw it on the day when it had already opened in the first run theatres here or two or three days later.

Q. In any event you saw it very close to the time that it was released here for distribution?

A. I saw it within the approximate week, yes.

Q. And subsequent to that there was no change of any kind or character made in any of this continuity, was there?

A. No, not that I know of.

Q. Now, who else was with you at the time that you observed this newsreel?

A. I don't remember that.

Q. And you don't recall at this time whether it was a day or two before it went to the public or perhaps the same day or a day after?

A. It couldn't have been a day or two before. It could have been the same day it went to the public or a little later but not in advance.

Q. How long did that newsreel, with relation to this million dollar reward, run to the public?

A. I can't answer that. They usually play out

(Testimony of Alex Evelove.)

within a month because of the obvious news elements in the newsreel.

Q. Do you recall how long it was before the picture *The Flame and The Arrow* was released for publication after [40] you saw the newsreel?

Mr. Williams: I object to that. I don't think that is material.

The Court: Of what materiality is that, counsel? Hasn't he testified to everything, so far as materiality is concerned, as to the publicity?

I might say that I have read this script of this newsreel and also this ad that appeared in the *Mirror*, and I don't see any place in there where Warner Bros. has offered any reward. You will notice the very peculiar wording. They intimate that there is a reward there, but there is nothing that Warner Bros. offered a reward. It talked about Burt Lancaster offering a reward, and I think it shows a picture of him in the Bank vault.

Did you have that picture taken?

The Witness: Yes, we shot that picture in the bank at the time of the newsreel, when the motion pictures were made.

Mr. Dryden: That is the actual newsreel script, in that actual newsreel that went out, and the first thing that was said was:

"In Hollywood, Burt Lancaster counts the one million dollar reward offered by Warner Brothers to anyone who can prove that Burt Lancaster himself didn't perform his daring stunts in *The Flame and The Arrow*." [41]



(Testimony of Alex Evelove.)

In the newsreel shown to your Honor, that exact continuity "one million dollars reward offered by Warner Brothers" was there, without reference to anybody else.

The Court: Counsel, that raises another point that I had in mind, and that is as to the publicity that Warner Bros. did, what evidence is there that Warner Bros. have offered any reward?

Mr. Dryden: Well, as I see it, your Honor—

The Court: It is your contention because the publicity department authorized them to so advertise, that they are bound by it? Is that your contention?

Mr. Dryden: Yes, to this extent, the publicity department of Warner Bros. authorized this advertisement of an offered reward, and they sent it to the wholly-owned subsidiary, who prepares it and sends it back, and it was all done, as the evidence will show, all of these pictures of Lancaster, and everything were taken out there by Warner Bros. studio.

I think the testimony will show, so far as Mr. Lancaster is concerned, he was making the offer, as he understood the script, on behalf of Warner Bros. studio, and that they went out there and had it done. He was taken out there by Warner Bros., and the whole thing was done that way.

The Court: You may proceed. I understand what you are driving at now. [42]

Mr. Dryden: Just one last question, if the Court please.

(Testimony of Alex Evelove.)

Q. (By Mr. Dryden): As the publicity director there, after this newsreel came out, did any of the executives of Warner Bros. Theatres, Inc. give you any instructions with relation to changing that continuity?

A. Warner Bros. Theatres, Inc.?

Mr. Dryden: Warner Bros. Theatres, Inc.

Mr. Swartz: That is Warner Bros. Pictures, Inc.

Mr. Dryden: Warner Bros. Pictures, Inc.?

The Witness: No.

Mr. Dryden: I believe that is all the questions I have of this witness.

Mr. Williams: No questions, your Honor.

The Court: That is all.

(Witness excused.)

The Court: The next witness.

Mr. Dryden: Your Honor, at this time I would like to call Mr. Lancaster with relation to interrogatories I want to put to him on the limited matter that relates to the offer.

#### BURT LANCASTER

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows: [43]

#### Direct Examination

The Clerk: You spell your name B-u-r-t?

The Witness: B-u-r-t.

The Clerk: And L-a-n-c-a-s-t-e-r?

(Testimony of Burt Lancaster.)

The Witness: That's correct.

Q. (By Mr. Dryden): Mr. Lancaster, this picture, *The Flame and The Arrow*, was made at Warner Bros. studio here in Burbank; is that correct?

A. That's right.

Q. And I believe you are one of the officers or executives of this Norma Productions; is that correct?

A. Yes, it is.

Q. What is your exact title there?

A. I am vice-president of the corporation.

Q. In that capacity, were you aware of the fact that the picture, as such as financed by Warner Bros.?

A. Yes, it was.

Mr. Williams: Your Honor, that is objected to as wholly immaterial to the issues involved in this case.

The Court: I don't know whether it is or not, counsel.

Mr. Williams: As a matter of fact, I may say, your Honor, it goes into a matter involving the interpretation of a written instrument.

The Court: I can't hear you. [44]

Mr. Williams: It goes into a matter involving the interpretation of a written instrument, a written agreement, and I don't think the Court is going to be assisted or aided any by this witness' conclusions as to what the effect of the contractual relations between the parties are.

The Court: That is true, but it gives me a general background of what this thing is about. I am in the dark.

(Testimony of Burt Lancaster.)

Mr. Williams: I can say very frankly, your Honor, so far as it may be at all relevant, this picture was made under what is called a production-distribution release, under the terms of which the picture was produced by Norma Productions, Inc., a corporation, of which Mr. Lancaster was, as he says, an officer. It was produced in the Warner lot, using Warner facilities, and financed by Warner Bros., under an agreement by which the picture would be distributed by Warner Bros. for a period of 15 years. They would have the exclusive right of distribution for 15 years. They would have a right to collect all money from distribution,—that is, Warner Bros. Distributing Corporation would collect its distribution fee, the cost of distribution would be paid, the costs of production would be repaid to Warner Bros., and after all those costs had been repaid, the balance, if any, would be divided fifty-fifty between Norma Productions, Inc. and Warner Bros. Pictures, Inc.

Those were the terms, so far as it may have any relevancy, [45] under which this picture was made.

The Court: What difference would it make in this case whether Warner Bros. distributed this picture, or who did it?

Mr. Williams: I don't think it makes any difference, but I say those are the facts, and if counsel wants to stipulate to that effect, all right.

Mr. Dryden: Yes, your Honor, I would be willing to accept for the record the statement of Mr.

(Testimony of Burt Lancaster.)

Williams, subject to any amplification that might be made, without taking any more time.

I would like to ask him with relation to the question of who paid for the publicity costs with relation to this picture?

Mr. Williams: The publicity was one of the costs which was deducted and repaid before there was any net profit divided. In other words, in effect, the picture paid for the publicity.

Mr. Dryden: And was that likewise one of the costs, as it related to the charges for this newsreel of Warner news?

Mr. Williams: I don't know anything about charges on the newsreel. That is another matter, and that comes from a different corporation entirely.

Mr. Dryden: All right. [46]

Q. (By Mr. Dryden): Mr. Lancaster, you recall the day when you went out here to the Bank of America relative to counting out a million dollars?

A. Well, I don't recall the day, but I can remember going out there.

Q. You remember the incident. You recall at that time that the arrangements with you to go out there were made by the Warner Bros. publicity department?      A. Yes.

Q. And you were transported out there in company with other members of the Warner Bros. publicity department; isn't that right?

A. That's correct.

(Testimony of Burt Lancaster.)

Q. Now, with relation to the script or any part of the script that you had there, had you ever seen that prior to the day it was delivered to you, when the picture was made?

A. Not to my knowledge. The first time I saw the script, as I recall, was at the bank.

Q. And that script was presented to you by Warner Bros. publicity department; isn't that correct?      A. Well, by a member of it.

Q. Particularly, with relation to your tour throughout the country publicizing this particular picture, on all of those occasions you were either in contact with or met a [47] member of Warner Bros. Theatres, Inc. in the publicity department; isn't that right?      A. Yes.

Mr. Dryden: Or Warner Bros. Pictures, Inc., I am referring to.

Mr. Williams: I think the witness answered your question, and if you meant Warner Bros. Pictures, Inc., I think he would have answered it differently.

Q. (By Mr. Dryden): Well, let me ask this question: In so far as the publicity men were concerned, you met them in the various cities you publicized this picture, and recognized them as being from Warner Bros. Pictures, Inc. in the publicity department?

A. I don't know if they were connected with Warner Bros. Pictures, Inc. or Warner Bros. Theatres. I don't know if there is such a thing as

(Testimony of Burt Lancaster.)

Warner Bros. Theatres, except I have heard the name. They were men in the city.

The Court: Counsel, was there any question that that was to be considered as a cost of publicity? Naturally, the picture has to be publicized, and Warner Bros. were interested in the publicity and had charge of it. Is there any question? I say "Warner Bros."

Mr. Williams: The publicizing of the picture in the course of distribution was done by Warner Bros. Theatres, Inc. and by Warner Bros. Distributing Corporation. [48]

The Court: Well, they are all a part of Warner Bros.?

Mr. Williams: They were a wholly-owned subsidiary.

The Court: So far as we are concerned, they are all one company?

Mr. Williams: I don't agree to that, but I am giving you the facts as to what companies they were. They are wholly-owned subsidiaries of Warner Bros. Pictures, Inc.

Mr. Dryden: Could you give us the wholly-owned subsidiaries? There is the Warner Bros. Pictures, Inc.

Mr. Williams: That is the parent company.

Mr. Dryden: Then you have the Warner Bros. News, Inc. That is the news company?

Mr. Williams: That is correct.

Mr. Dryden: And there is Warner Bros. Distributors, Inc.; is that correct?

(Testimony of Burt Lancaster.)

Mr. Williams: Warner Bros. Distributing Company.

Mr. Dryden: Company, Inc. And there is Warner Bros. Theatres, Inc.?

Mr. Williams: Yes.

Mr. Dryden: And all of them are wholly-owned subsidiaries of the parent company?

Mr. Williams: All except the parent company are wholly-owned subsidiaries of the parent company.

Mr. Dryden: All right. I will agree to that.

Then maybe we can expedite the time here. [49]

Were all of these various wholly-owned subsidiaries connected with this picture in one way or another, as it related to production, or distribution, or share in the profits?

Mr. Williams: No, sir.

Mr. Dryden: Which ones in so far as the distribution? Was the Distribution Company connected with the picture?

Mr. Williams: Warner Bros. Distributing Company distributed the picture. Warner Bros. Theatres, Inc. financed the production of the picture—I mean Warner Bros. Pictures, Inc. financed the production of the picture. Warner Bros. Theatres, Inc. show the picture in some of its theatres. Warner News, Inc. had nothing to do with the production, distribution or showing of the picture.

The Court: May I ask this question: Was the publicity put out by the distributing company or by the parent company?



(Testimony of Burt Lancaster.)

Mr. Williams: This particular publicity that has been testified to was put out by the parent company. Other publicity to which counsel has referred as a personal appearance tour was put out by the distributing company and by the theatres company, depending on which one happened to be interested in the particular place.

The Court: Why don't you confine this to Los Angeles, instead of covering the whole United States, counsel?

Mr. Dryden: All right, sir. [50]

Mr. Williams: Incidentally, I may say the two little parts of newsreel, showing the appearance in New York and some other city, were newsreels of personal appearances of Mr. Lancaster subsequent to the issuance of the first newsreel.

The Court: The personal appearances are not involved in this case, are they?

Mr. Williams: No, your Honor.

Q. (By Mr. Dryden): Now, directing your attention to this particular day out there at the bank, this script was presented to you out there at the time the pictures were being taken; is that correct?      A. That's right.

Q. Now, at the time that you were making reference here to the reward of a million dollars, you were not referring to yourself as making such a reward, were you?

A. No, I wasn't. I don't think I said anything about my money, but the money, if that is what you mean.

(Testimony of Burt Lancaster.)

Q. And in so far as you were concerned, at the time that you read that script there, you were referring to Warner Bros. Pictures, Inc.; is that correct?

Mr. Williams: Now, if your Honor please, there is no reference in the portion of the script read by Mr. Lancaster with reference to Warner Bros. Pictures, Inc. As I recall it, that was the part narrated by the narrator, not the [51] part Mr. Lancaster spoke.

Mr. Dryden: I am not concerned with what he spoke. I believe, your Honor, I am entitled to know, in view of the fact there is the contention that no offer was made, as long as he was taken out there by Warner Bros., and this thing was done by Warner Bros. Pictures, to determine from him on whose behalf he felt he was making the offer.

Mr. Williams: We object to that as not being relevant to any issue involved in this case, and immaterial, as to what his thought on the subject was. The question is: What was the language?

The Court: I think we are interested in just what the offer was, counsel.

Mr. Dryden: All right.

Q. (By Mr. Dryden): Now, at the time that you were referring to the offer of the million dollars, you were referring to Warner Bros. Pictures, Inc.; isn't that correct?

Mr. Williams: That is objected to, if your Honor please, on the ground the language of the

(Testimony of Burt Lancaster.)

offer is evidence of what it refers to, and not this witness' understanding.

The Court: I think that is correct, counsel. Let's show Mr. Lancaster this picture?

Do you recognize this picture of publicity? [52]

The Witness: Yes, I do.

The Court: Do you read there where—I think here is one sentence, the first sentence, "Things can't be so bad in the movie business. Warner Bros. offered to give away \$1,000,000 today."

Was that your statement?

The Witness: I did not make any statement as is written there.

The Court: This is somebody else's writing; is that it?

The Witness: Yes, I had nothing to do with it.

The Court: You had nothing to do with it?

The Witness: That followed the appearance of the newsreel.

The Court: Oh, this followed?

The Witness: I presume it followed, because I don't know how it could have gotten to the newspapers until after it was shot in the bank.

The Court: I don't think this has been marked. Oh, yes, it has been marked.

Mr. Williams: It was marked for identification, I think.

The Court: Yes. I will return it to the clerk.

Q. (By Mr. Dryden): Who was it that requested that you make the offer that was referred

(Testimony of Burt Lancaster.)

to at the time that you were having the newsreel made? [53]

Mr. Williams: That is objected to as immaterial.

The Court: It isn't very clear, counsel. Wouldn't the evidence show that Mr. Lancaster was taken out there under the direction of the publicity department of Warner Bros., whatever the plaintiff in this case is, their publicity department, and he went out there, and at their instructions, and had the pictures taken?

Mr. Dryden: That is correct, your Honor. I have no further questions.

Mr. Williams: I have no further questions on that.

The Court: That is all, Mr. Lancaster.

Mr. Williams: I understand Mr. Lancaster is to be called later on the other issue?

The Court: I assume so.

Mr. Dryden: Yes, your Honor.

The Court: Call your next witness.

Mr. Dryden: The only other evidence we have with relation to the matter of the offer are the Warner Brothers, who are coming in here at 9:45 tomorrow, your Honor, and I don't want to be presumptuous with this court's time, but we tried to figure out at least some way of accommodating these witnesses and because of these films we felt we couldn't use them until tomorrow morning.

May I inquire as to your Honor's customary closing time?

The Court: Well, it is very close to closing time now [54] and we will take a recess until 10:00 o'clock tomorrow morning. But I want to say to counsel that I am not accustomed to waiting around for witnesses. I expect to have your witnesses present.

I have to wait too much for other people ordinarily without having to wait for witnesses.

Mr. Dryden: May the witnesses who are present be directed to return tomorrow?

The Court: Any witness under subpoena is directed to return tomorrow morning at 10:00 o'clock.

I don't know whether or not you are going to need Mr. Lancaster tomorrow. I suppose he is a busy man but can make himself available if he is needed. I think we should try to accommodate him.

Mr. Dryden: We will certainly try to do that. I anticipate, however, that we will still—we have to hear from the defense first on the question of the offer. I will try to work that out and certainly do my best to accommodate him, your Honor.

The Court: Very well, we will recess until 10:00 o'clock tomorrow morning.

(Whereupon at 4:00 o'clock p.m. a recess was had until 10:00 o'clock a.m., Wednesday, July 22, 1953.) [55]

Wednesday, July 22, 1953, 10:00 a.m.

The Court: You may proceed, gentlemen.

Mr. Dryden: I would like to call Mr. Jack Warner.

Mr. Williams: I just sent for him. He is just coming in.

JACK L. WARNER

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, sir?

The Witness: Jack L. Warner.

The Clerk: Thank you. Will you take the stand?

Q. (By Mr. Dryden): Mr. Warner, what is your occupation, sir?

A. I am in charge of production at Warner Bros. studios.

Q. And that is the Warner Bros. Studios, of course, in the Los Angeles office, or the Burbank office, rather, as distinguished from the New York office? A. Burbank, yes, sir.

Q. What are your general duties with relation to the operation of the Warner Bros. Studios here?

A. The general duties are seeing that pictures are made [57] and shipped East.

Q. In that respect, do you recall entering into a contract with Norma Productions relating to the production of the picture *The Flame and The Arrow*? A. Yes, I do.

Q. Your counsel has handed me a photostatic copy of what purports to be that contract. Do you recognize that as being the contract?

A. If my counsel says so. Yes, it is, undoubtedly, if he says so.

(Testimony of Jack L. Warner.)

Mr. Williams: Mr. Warner, will you speak a little louder, please?

The Witness: I said if my counsel says so, undoubtedly it is.

Mr. Dryden: I will ask it be marked for identification.

Mr. Williams: We object to it. I can't object to the marking for identification, of course, but I told counsel this was one from another case, and I will have to arrange to get another copy some way or other to substitute here.

Mr. Dryden: I have no objection to that. I just want it marked for identification.

The Court: You will have no difficulty getting copies. That is no obstacle.

The Clerk: 7, for identification. [58]

(The document referred to was marked Plaintiff's Exhibit 7, for identification.)

[See page 314.]

Q. (By Mr. Dryden): Now, did you participate in the arrangements for the making of the picture *The Flame and The Arrow*? A. Yes, I did.

Q. With relation to the question of advertising and publicity, in so far as that picture was concerned, that was assigned to Mr. Evelove; is that correct?

A. I would say it was assigned to the complete publicity department at the studio, so far as the production is concerned, the making of the publicity while the picture was being made.

Q. And after the picture was concluded, that

(Testimony of Jack L. Warner.)

was likewise offered to the publicity department, was it?

A. When the pictures are completed, the publicity is assigned to the New York publicity department.

Q. All right. Now, in this particular case you were familiar with the instructions from New York relative to publicizing the stunts of Burt Lancaster, were you not?

A. No, I was not familiar at all.

Q. Did you see the newsreel with relation to this million-dollar offer?

A. I did see the newsreel, yes, sir.

Q. And when and where did you see the newsreel? [59]

A. I saw it in our studios; just when, I don't know, but I saw this particular newsreel that had this offer in it, whatever it was.

Q. As I understand, from what you have told me here—I withdraw that for the moment. Do you recall in the newsreel that you saw—

Mr. Dryden: Perhaps I had better get that exhibit, if I may.

Mr. Swartz: That is 6.

Mr. Dryden: I am looking here at Plaintiff's Exhibit 6.

The Court: May I ask counsel: Is this newsreel publicity we were talking about before or after the picture was released?

Mr. Dryden: This newsreel was released just



(Testimony of Jack L. Warner.)

about the same time that the picture was released, your Honor, is my understanding.

Mr. Williams: I think that the newsreel and the picture were released during the same week, your Honor. As to whether one came in a day or two before the other, I can't say.

Th Court: That is true also of the newspaper publicity.

Mr. Williams: Some of the newspaper publicity that has been identified here was before the picture was released and some of it about the time the picture was released.

Q. (By Mr. Dryden): Now, directing your attention here to this Exhibit 6, which purports to be the actual newsreel script, at the time that you heard this newsreel do you recall [60] the statement in there as follows:

“In Hollywood Burt Lancaster counts the \$1,000,000 reward offered by Warner Bros. to anyone who can prove that Burt himself didn't perform all his daring stunts in *The Flame* and *The Arrow*”?

A. It has been so long ago I can't say just what it was, but it was words to that effect, no doubt.

Q. Now, what is your capacity with Warner News, Inc.?

A. Nothing whatsoever. I have nothing to do with the newsreels.

(Testimony of Jack L. Warner.)

Q. I understand from our—withdraw that for the moment. Warner Bros. bought the RKO-Pathé News in August of 1947, isn't that correct?

The Court: I understand, counsel, that was stipulated to.

Mr. Williams: We stipulated to that.

The Court: It was stipulated it is a subsidiary of Warner Bros.

Mr. Dryden: I was going to make reference to the shield that is shown on the newsreel, your Honor.

The Court: What?

Mr. Dryden: I was going to inquire with relation to Warner Bros.'s shield as shown in the newsreel.

The Court: What would that prove? Why isn't the stipulation broad enough to cover that? [61]

Mr. Dryden: If your Honor feels it is I will not ask any further questions.

The Court: I think it is, but I don't want to preclude counsel from presenting his case. It seems to me, however, when you have a stipulation that is better than anything you can attempt to prove.

Mr. Dryden: All right.

Q. (By Mr. Dryden): Mr. Warner, in your capacity, being in charge of the Burbank Studios, Norma Productions never authorized Warner Bros.

(Testimony of Jack L. Warner.)

to make an offer of \$1,000,000 reward on their behalf, was there?

A. I must enlighten you on the whole incident if I can.

Q. Will you just answer the question?

A. Well, the question is hard to answer.

Q. It is simply this. Did anybody connected with Norma Productions authorize you to offer a \$1,000,000 reward of their money?

A. I was never in contact or had anything to do with this complete offer, newsreel or any other or any part of the stunt or whatever it may be called.

Q. Well, in your capacity as an officer of your company, were you ever informed at any time that Norma Productions had authorized Warner Bros. to offer a \$1,000,000 reward of their money as related to this picture? [62]

A. No.

Q. Now, after you saw—

The Court: Do you wish to make any explanation with reference to your answer. You may have that privilege.

The Witness: The only explanation I wanted to make was—

The Court: You want to remember sometimes people talk too much.

The Witness: That causes a lot of trouble but I personally, in my capacity, have nothing whatever to do with the newsreels, the publicity, or how all this came about or in fact anything comes about in the publicity department in our studio. We have

(Testimony of Jack L. Warner.)

a department that does that. They do it on their own accord.

The Court: That is delegated authority?

The Witness: Yes, that is right, sir. It is impossible for me to do everything and that is one of the things I just haven't time to do or can't do. I am not qualified for it.

Q. (By Mr. Dryden): In other words you feel you have competent people and you delegate to them that work and let them handle it as they see fit, is that correct?

A. Yes, that is correct.

The Court: But if they don't do it as you see fit then you fire them?

The Witness: Or they may fire me. [63]

Q. (By Mr. Dryden): Did you ever ascertain who it was that was the announcer in the newsreel that made reference to the reward?

A. I knew nothing about the complete incident. We call it a "clip" in a newsreel. I saw it on the screen but never knew it was being made and never knew anything about it. I looked at it just the same as you do any other newsreel, which I do for my own enlightenment each week.

Q. When you saw the newsreel that made reference to the reward offered by Warner Bros. in the language that I referred to, did you do anything with relation to ordering that continuity changed?

A. No, I did not.

Q. Did you do anything with relation to repudiating that offer that was made in the newsreel?

(Testimony of Jack L. Warner.)

A. No, I did nothing whatsoever. Just as I said before, I looked at it for—I look at all newsreels. It keeps you alert to what is going on in the world and I passed it off as though it was just a part of the newsreel.

Q. Is Mr. Evelove in charge of the publicity department or does he have a superior?

A. At the studio—no, I can't remember if—I don't think he had a superior at this time to my knowledge. I just don't know.

Q. Do you know Mr. Alan Pomroy? [64]

A. I only know him by seeing him on the screen. I don't believe I have met him. I may have over the years but I can't remember.

Q. Do you know of your own knowledge approximately to date what this picture has grossed?

A. I don't know.

The Court: What materiality is that, counsel?

Mr. Dryden: It goes to the question of the benefits received by reason of this advertising, your Honor. If you think that is a matter that you can take judicial notice of I certainly shall not inquire further.

Mr. Williams: I object to that.

The Court: They are not running an organization for their health.

Mr. Dryden: No, not by any means.

Q. (By Mr. Dryden): Now, without going into too much detail, as I understand it there is Warner Bros. Pictures, Inc. here that you have locally, is that correct?

(Testimony of Jack L. Warner.)

A. Warner Bros. Pictures, Inc. is the parent corporation.

Q. Then you have the Warner Bros. Distributors—what other companies do you have other than Warner Bros. Pictures, Inc. here locally?

The Court: That was all stipulated to yesterday, counsel.

Mr. Dryden: I understood there was some 31 companies [65] with that name in various capacities but I didn't know that it was in the record.

Mr. Williams: I am certain this witness can't tell him if there are 31 of them from memory. We have made a stipulation as to those that are involved in this case.

The Court: I am familiar with the stipulation, counsel.

Mr. Dryden: All right.

Q. (By Mr. Dryden): As I understand from the testimony yesterday you have a publicity department here that is under the supervision of the New York office? A. Yes, they are, sir.

The Court: And the publicity is supervised by them before it is released as far as the newsreels are concerned?

The Witness: They kind of supervise each other. It is such a fast moving business.

The Court: The testimony here yesterday was to the effect that the newsreel was made and then the script was prepared and sent to New York and then the newsreel was prepared in New York and

(Testimony of Jack L. Warner.)

then returned here where it is released. Is that the way it works?

The Witness: Yes, in this particular clip.

The Court: How about the ordinary publicity that is in the newspapers, do your local people put that out without consulting New York?

The Witness: Yes, we do. They run almost on their [66] own economy. It is sort of a hit and miss publicity idea.

The Court: They have a regular mill for it?

The Witness: Yes, and the newspaper people seem to demand those releases from us every day. They telephone us every day and ask for publicity with reference to the people we sign up as an actor or when we start a new story. It is a regular mill. I think that would cover it good.

Q. (By Mr. Dryden): Was any offer of reward, as it related to the picture *The Flame and The Arrow* ever repudiated by Warner Bros. Studio?

Mr. Williams: That is objected to, your Honor please, on the ground it assumes a fact not in evidence, namely, that an offer of reward was made.

Mr. Swartz: May I be heard on that, your Honor?

Mr. Williams: And it also calls for a conclusion and speculation on the part of the witness.

The Court: I think it calls for a conclusion. I think the answer to the question is when he said he didn't do anything about it, and he saw the news-reel. Isn't that your answer?

Q. (By Mr. Dryden): Then, I take it nothing

(Testimony of Jack L. Warner.)

was done, either verbally or in writing, with relation to this; is that correct?

A. So far as I was concerned, no. I don't know what else was done, but I personally didn't do anything. [67]

Q. Do you have any knowledge of anything having been done by your studio?

A. No, I do not have.

The Court: Gentlemen, I don't know that I am too familiar with the requests for admissions. This letter of acceptance of a so-called offer, is there any question about its having been written, and what happened to it?

Mr. Dryden: No, I don't believe there is any question at all, your Honor. We have the letter.

The Court: I just thought that the requests for admissions must have included that.

Mr. Williams: I don't remember that that was included in the requests for admission, your Honor, but we have a letter dated October 20, 1950, addressed to Warner Bros. Pictures, Inc. and Warner Bros. Studios, and signed by M. L. Marcus.

Mr. Dryden: He is one of the associate counsel in this matter, and was the original attorney.

Mr. Williams: It shows that it was received on October 21st by the Studio, and that is the only knowledge we have of any so-called acceptance.

The Court: I understood from the pleadings some place along the line that the plaintiff in this case had written a letter accepting the offer.

Mr. Williams: We have never seen such a letter.



(Testimony of Jack L. Warner.)

Mr. Dryden: That is true. It was written through his attorney, Mr. Morris Marcus.

Mr. Williams: Is that the letter which I have just described?

Mr. Dryden: We can take a look at the copy and see. I believe it is. In view of that statement, may I offer this in evidence?

Mr. Williams: Yes, but you haven't answered my question as to whether that is the letter to which you refer,—

Mr. Dryden: Yes.

Mr. Williams: —as being the acceptance of the so-called offer.

Mr. Swartz: The letter, of course, speaks for itself. It refers to a prior acceptance, and it is the record notice about it.

Mr. Williams: The letter is no proof of the contents itself.

Mr. Swartz: We will have it admitted, and put on evidence with respect to that. I don't think it should be the subject of a stipulation.

Mr. Dryden: What happened, as I understand it, your Honor, is the fact that they were put on notice that this was accepted, and then it was confirmed in writing.

Mr. Swartz: That is right.

The Court: You have been very quiet about that feature [69] of the case up to this time, and I wondered if it was covered by admissions not in evidence, that I haven't as yet seen, or by the answer.

(Testimony of Jack L. Warner.)

I didn't know whether it was an issue in the case or not.

Mr. Williams: It certainly is an issue, your Honor; no doubt about that.

Mr. Dryden: In any event, I will offer this now.

The Court: There is nothing to indicate that it isn't in issue, so far as you are concerned?

Mr. Williams: No, your Honor. That would be Exhibit No. what?

The Clerk: Exhibit 8. Is this going in evidence?

Mr. Dryden: Yes.

The Clerk: In evidence.

(The document, marked Plaintiff's Exhibit 8, for identification, was received in evidence.)

[See page 386.]

Q. (By Mr. Dryden): This may be repetitious, your Honor, but it was called to my attention. You are a director of Warner Bros.; isn't that right?

A. Yes, I am.

Q. Did the directors ever do anything with relation to changing or altering the continuity of the newsreel that you listened to? A. No.

Q. In so far as you know? [70]

A. No, I don't believe that would be their function.

Q. Aside from that, in so far as you know did they ever issue any repudiation, pursuant to the instructions of the board of directors with relation to this purported offer?

A. I don't know. I don't think so.

(Testimony of Jack L. Warner.)

Mr. Dryden: I don't believe I have any further questions, your Honor.

Cross Examination

Q. (By Mr. Williams): Did the board of directors, to your knowledge, ever authorize any person to give away or offer as a reward, or otherwise, to any person the sum of \$1,000,000?

Mr. Dryden: That is objected to upon the following grounds: It is compound, it is leading, and suggestive, calls for an opinion and conclusion in so far as this witness is concerned, and is an invasion of the ultimate fact to be decided by the trier of fact.

The Court: Counsel, then, the only thing is that the minutes of the directors' meetings would be the best evidence, wouldn't it?

Mr. Dryden: Yes.

Mr. Williams: Well, the fact is that counsel asked the question.

The Court: Counsel asked the question, and you kept quiet, too. [71]

Mr. Williams: There was a reason.

The Court: Well, maybe so.

Mr. Williams: Of course, the only thing that can be shown on this is by producing all the minutes, having all the minutes of all the meetings for the purpose of showing that.

The Court: All the witness could say is that there was no direction at any meeting he ever attended, but that does not mean there wasn't any,

(Testimony of Jack L. Warner.)

because there is no evidence he did attend all of them. Undoubtedly they hold meetings in New York all along without his attendance.

Mr. Williams: That is right. Undoubtedly, he received notice of the meetings and the minutes of the meetings.

The Court: That is right.

Q. (By Mr. Williams): That is correct, isn't it, Mr. Warner?

A. I do. Not to my knowledge, there has never been anything like this brought up to the board of directors.

Mr. Dryden: Just a minute. I move to strike that. It is not a response to the pending questions.

The Court: Counsel, if that is a fact,—well, you don't contend that they did it at any time, do you? Did you ever bring this matter up before the board of directors?

Mr. Dryden: I have no knowledge to indicate that they did, your Honor, and so I cannot certainly so represent to the court. By the same token, I have no knowledge that they [72] didn't. I would assume under normal circumstances, in view of what he has said, that matters of this kind with relation to the making of rewards, and so forth, was left to the delegated persons rather than taken up before the board of directors.

The Court: Then what does his testimony amount to? It amounts to a negative, so far as that question is concerned, doesn't it, all the way around?

Mr. Dryden: That is correct.

(Testimony of Jack L. Warner.)

The Court: Both from your questions and on the questions by Mr. Williams.

Mr. Williams: That is correct.

The Court: He has answered the question.

Mr. Williams: He has answered it. I have no further questions.

The Court: That is all.

Mr. Williams: May this witness now be excused, your Honor?

The Court: As far as the court is concerned.

Mr. Dryden: Yes, I don't anticipate we will need him any further. I assume we can have the same stipulation in so far as this witness is concerned. As I understand, the other witness will leave town.

Mr. Williams: Yes. So far as Mr. J. L. Warner is concerned, if you need him, I think we can have him back [73] on about an hour's notice.

Mr. Dryden: Yes. I will call Mr. Harry Warner.

### HARRY M. WARNER

called a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

The Clerk: Will you please state your name?

The Witness: Harry M. Warner.

The Clerk: Thank you. Will you take the stand.

Q. (By Mr. Dryden): Mr. Warner, what is your relationship with Warner Bros.?

A. I am the president of Warner Bros. Pictures, Inc.

(Testimony of Harry M. Warner.)

Q. Do you maintain your principal offices in your capacity here or in New York?

A. For quite some years I have retained it here.

Q. Do you have any personal knowledge yourself with relation to this picture, The Flame and The Arrow?      A. No, sir.

Q. Do you have any personal knowledge—

A. With one exception, that I once asked our counsel, Herbert Freston, "What's it all about?" when I read about it in the paper. [74]

Q. Well, I am not going to ask you what he said.

A. I am not telling you, sir.

Q. Mr. Warner, do you have any knowledge of the publicity that went out with relation to this picture at all?      A. No, sir.

Q. As I gather from you, then, the only thing you know about this entire situation relates to what you read in the papers subsequent to the indications of litigation; is that right?

A. That's right, sir.

Q. What is your relationship with the Newsreel Company,—that is Warner News, Inc., isn't it?

A. My relationship is to have the proper people operate it.

Q. Are you in a capacity such that you determine who is to operate that company?

A. That company, or any other company, sir.

Q. And who is the operator of that particular company?

A. Norman Moray is the man who operates our

(Testimony of Harry M. Warner.)

shorts department, and he has charge of the operating of the newsreels.

Q. And you are the one that appointed him to that particular position; is that right?

A. Yes, sir.

Q. Did you appoint the other executives to that particular [75] organization?

A. No. I appoint the top executives of every organization throughout the United States.

Q. Then, in so far as the men in charge of the various owned subsidiaries, you appoint the top executives of each one of them, including Warner News, Inc.; is that correct? A. Yes, sir.

The Court: And then they run it themselves?

The Witness: They run it. I would be quite a man if I would try to run everything else.

Q. (By Mr. Dryden): Subsequent to your ascertaining the fact that there was some claim made relative to this offer, was there ever any disciplinary action taken with relation to any of the personnel either of Warner Bros. or Warner News, Inc.? A. No, sir.

Mr. Dryden: I have no further questions, your Honor.

The Court: Any questions, counsel?

#### Cross Examination

Q. (By Mr. Williams): You are a member of the Board of Directors of Warner Bros.?

A. Yes, sir. [76]

Q. So far as you know, was the matter of au-

(Testimony of Harry M. Warner.)

thorizing any person to make any offer or gift on behalf of Warner Bros. ever taken up before the board of directors?      A. No, sir.

Mr. Williams: That is all.

The Witness: Of course—pardon me—I am not at every meeting.

The Court: He said, "So far as you know."

The Witness: No, sir.

The Court: That is all.

(Witness excused.)

Mr. Dryden: Will you take the stand, Mr. Garrison?

### JULES GARRISON

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Jules Garrison.

### Direct Examination

Q. (By Mr. Dryden): Mr. Garrison, directing your attention to the month of July 1950, did you have occasion to see a newsreel relating to the picture *The Flame and The Arrow*?

A. Yes, I did. [76]

Q. And in seeing that newsreel do you have any recollection of what was said with relation to any reward?      A. Yes.

The Court: Counsel, what is the purpose of going into the wording of it. It has already been stipulated to.

Mr. Dryden: All right, your Honor.



(Testimony of Jules Garrison.)

Q. (By Mr. Dryden): Now, after hearing the script of the newsreel did you then go and see the picture *The Flame and The Arrow*?

A. Yes, I did.

Q. And when was it that you saw the *Flame and The Arrow* for the first time with reference to your observations of the newsreel?

A. I am not positive but I am pretty sure it was the same day—that is the same day or the next day. I think I went the same day.

Q. And did you have occasion to go and see this picture more than once?

A. On many occasions.

Q. Prior to the time that you went to these movies had you had occasion to work in the industry in the capacity as a stand-in or extra?

A. Yes, I did.

Q. And did you know Don Turner, a stunt man?

A. I have seen him around the studios. [77]

Q. All right. Now, when you saw the picture *The Flame and The Arrow*, particularly as it related to the character Dardo, did you see any sequences in there wherein you observed—wherein you observed Don Turner playing the part of the character Dardo?

A. Not right away, not until after other things had happened.

Q. Well now, I will get into the other things a little later, but what I want to know is this. When you saw this picture did you observe Don Turner

(Testimony of Jules Garrison.)

playing the part of Dardo? A. Yes.

Q. In some of the sequences? A. Yes.

Q. All right. Now what sequences in the picture did you observe Don Turner playing in?

A. The riding sequence at the head of a band of horses in the courtyard where the big fight takes place and in the rescue of Papa Pietro and in the roof stunt—going upon the roof.

Q. That was with the midge?

A. That was where the midget was carried on his shoulders up over the roofs and there were other places. I wasn't sure of them at the time.

Q. What about the fight sequence with relation to [78] the duel between Allesandro and Dardo?

A. I was pretty sure of it but it was a little dark.

Q. Now, subsequent to making these observations did you do anything with relation to communicating with the studio? Answer that question yes or no.

A. Yes.

Q. All right. And was that by telephone or in what manner?

A. Through Mr. Marcus, the attorney.

Q. Was the first connection with Warner Bros. by letter or telephone—was it a conversation insofar as you know?

A. I telephoned them first.

Q. All right. You telephoned them first?

A. Yes.

Q. When you telephoned them what did you say?

(Testimony of Jules Garrison.)

Mr. Williams: That is objected to as no proper foundation having been laid as to who he talked with.

Q. (By Mr. Dryden): When you talked to the studio did they identify themselves, the person you talked to?

A. No. They turned me over to—they couldn't seem to find out who to turn me over to. They turned me over to Freston & Files and said to give it to them.

Q. Did you then call Freston & Files?

A. Yes, I did. [79]

Q. And did you talk to anyone there insofar as you can identify them?

A. I believe I talked to Mr. Files.

Q. And was anything said—

The Court: Which Mr. Files? Do you know which Mr. Files?

The Witness: No, I don't.

Mr. Williams: We are willing to stipulate it was Mr. Gordon Files.

Q. (By Mr. Dryden): Was anything said about—I will accept the stipulation. Was anything said at that time with relation to accepting the offer that you had seen in the newsreel?

A. Yes, I accepted the offer.

Mr. Williams: Just a moment.

The Court: What did you say?

Mr. Williams: I move to strike that out as being a conclusion and the witness be instructed to say what he said.

(Testimony of Jules Garrison.)

The Court: Yes, that is correct.

Q. (By Mr. Dryden): What did you say?

A. I said that I had seen the motion picture called *The Flame and The Arrow* or, rather, I had seen the offer in the newsreel wherein Burt Lancaster had, in behalf of Warner Bros., offered \$1,000,000 to anyone who could prove that "I do not do all of the stunts in the picture," and I said that I felt sure I could prove it and told them that I had [80] tried to get the award accepted publicly in some way but didn't do it so I was calling them up to let them know and they didn't want to give me the \$1,000,000 and I told them I would go and get a lawyer and try to get it for myself. That was about the substance of it.

Q. Did you then consult—

The Court: They didn't hand you out the \$1,000,000?

The Witness: No.

Q. (By Mr. Dryden): Did you go and consult with an attorney at that time?      A. Yes.

Q. And what was his name?

A. Well, I first consulted with some attorneys in Hollywood. I was referred to them by one of the trade papers.

Q. Well, particularly Mr. Marcus, did you go see Mr. Marcus?

A. Yes, I saw Mr. Marcus. I talked to him about it.

Q. And in connection with that did you author-

(Testimony of Jules Garrison.)

ize Mr. Marcus to write a letter to Warner Bros. Studio relating to this meeting?

A. Yes, I did.

Mr. Dryden: I have no further questions at this time, your Honor. [81]

### Cross Examination

Q. (By Mr. Williams): Mr. Garrison, you worked on this picture, *The Flame and The Arrow*, did you not? A. Yes, I did.

Q. And you worked as an extra?

A. As an extra, yes.

Q. How many days did you work on the picture?

A. I worked approximately a week.

Q. Approximately a week, you say?

A. Yes. I am not positive of that. That is just a good guess.

Q. What did you do?

A. I was what is known as an atmosphere player, mingling in the crowd and wearing a costume and sometimes a wig and doing about everything they tell you to do.

Q. And in what sequence did you work?

A. I worked in the—I worked in the scene—well, I can't remember them exactly, but I worked in—I was a soldier—that is an extra soldier in one scene. There were a lot of other soldiers in the great hall. I was in some of the scenes in the great hall. I was in some of the scenes at the supposed execution of Dardo. I don't remember any others.

(Testimony of Jules Garrison.)

Q. Would you say, if I stated to you that our records [82] show that you worked 12 days on that picture as an extra, that that was probably correct? A. Yes, sir.

Q. And it shows that you worked as an extra in the scene in the great hall where the fight was taking place and also in the——

A. No, there was no fight taking place.

Q. But you worked in the scenes in the great hall? A. In the great hall, yes.

Q. You weren't there when the fight took place? A. What fight, sir?

Q. Any fight.

A. There was what you call a general melee. There were 300 or 400 extras when they rushed the castle. There was one big crowd that batted the door down from the outside and then there was a crowd inside and I don't know what you would call it. I guess you would call it a fight, yes.

Q. Now, you were working as an extra during that scene? A. Yes, sir.

Q. And what other place besides in the great hall was it that you worker as an extra?

A. Well, I was supposed to work in two or three others.

The Court: I don't care what you were supposed to work at. Where did you work. That is the question. [83]

The Witness: What I meant, your Honor, was I was listed as a rider for two or three days, I believe, but I don't ride so I stayed out of the way.

(Testimony of Jules Garrison.)

Q. (By Mr. Williams): That didn't interfere with your getting your check for that day, did it?

A. Well, we do other things in the day's work besides riding.

Q. Now, you first called the Warner Bros. Studio by dialing the telephone number of that studio, did you?           A. Yes, sir.

Q. And a girl answered the telephone, a telephone operator, apparently?           A. Yes, sir.

Q. And you told her that you wanted to contact somebody about collecting \$1,000,000 reward in connection with *The Flame* and *The Arrow*?

A. Yes, sir.

Q. And after some hesitation on her part she referred you to the law firm of *Freston & Files*?

A. No, I wouldn't say she did. I can't name any names but I talked to—I talked to somebody at the studio. I don't know who it was. I talked to someone there besides the telephone operator. Probably someone in the production office.

Mr. Williams: Just a minute. I move to strike out [84] "probably."

The Court: That is true.

The Witness: I talked to someone.

Q. (By Mr. Williams): You don't know who you talked to?

A. I would say the operator referred me to the—I believe she referred me to the production office and they advised me to call *Freston & Files*.

Q. Then you called and talked to a man who

(Testimony of Jules Garrison.)

told you his name was Gordon Files, is that correct?      A. Yes, sir.

Q. Would you give us the date of that conversation?

A. I can't give it to you exactly but it was about two or three weeks before I spoke to Mr. Marcus, the attorney.

Q. If I told you that our records show the date was October 9, 1950 would you agree that that is about the date that you talked—that you did talk to Mr. Files?

A. I couldn't be sure, sir.

Q. You wouldn't say it was not October 9, 1950, would you?      A. No, I wouldn't.

Q. Now, you had a conversation with him and how long was that conversation?

A. Quite a long one as I remember it.

Q. And what you told him was that you had read the [85] advertising matter or had seen the advertising matter in connection with an offer of \$1,000,000?      A. Yes, sir.

Q. Had you seen anything except the newsreel at that time?

A. Yes. I had seen—I believe I had seen the newspaper article in the *Mirror*.

Mr. Williams: May I have that exhibit for identification, please?

Q. (By Mr. Williams): When you say you had seen the newspaper article in the *Mirror*, are you referring to the article that your counsel produced



(Testimony of Jules Garrison.)

here that has been marked for identification as Exhibit 3?

A. Yes, sir.

Q. That is the one you referred to?

A. Yes.

Q. Did you see any other written matter except this article which appeared in the Mirror?

A. Not that I can remember now.

Q. Had you seen that article that appeared in the Mirror before you called up the studio?

A. I am not sure whether it was before or afterwards.

Q. Now tell me the exact language you used when you spoke to Mr. Files about this offer?

A. That would be difficult, sir. [86]

Q. Give me your best recollection. I know you can't give us the exact language, but give us your best recollection, Mr. Garrison.

A. I told him, as I said, that I had seen the offer and that I felt sure I could prove that Mr. Lancaster did not do all his own stunts and that I would like the \$1,000,000.

Q. Was that the extent of the conversation?

A. No, that wasn't all of it.

Q. Tell us the rest of it.

A. Mr. Files said that they didn't know anything about it and I went on to explain to him about it, what it was and where I had seen it.

Q. What did you say?

A. I said that it was in the form of a newsreel at the Newsreel Theatre. It was part of the regular world news and that I deemed it to be an authentic

(Testimony of Jules Garrison.)

offer and that I had seen the picture, I think by that time, more than once. And I explained to him some of the scenes that I thought that Mr. Lancaster didn't do his own stunts—that they were fantastic and so on. And he took all that information down and I told him that I felt——

The Court: How do you know he took it down if you talked to him over the telephone?

The Witness: I just took it for granted, your Honor. And then I told him that I didn't think that I was going to [87] be the only one that would accept this offer; that perhaps other people would see it and it would play all over the world and I said I would wait two or three weeks and if I didn't hear from them I would get a lawyer.

Q. (By Mr. Williams): Was there anything else that was said?

A. That is all I remember now, sir.

Q. Did you tell him what proof you would get—you thought you could get?

A. I don't think I talked very much about that. I tried——

Q. Did you mention Don Turner's name to him?

A. I am not sure whether I did or not.

Q. Would you say you did or did not, according to your best recollection?

A. By that time I don't know whether I had my pictures or not, the still pictures that I have now.

Mr. Williams: Will you read that answer?

(Answer read.)

Q. (By Mr. Williams): The question I asked

(Testimony of Jules Garrison.)

you, Mr. Garrison, was did you say anything to Mr. Files about Mr. Turner? What is your best recollection?

A. I may have, yes. I probably did.

Q. Did you say anything to him about Billie Curtis, the midget? [88]

A. I may have, yes.

Q. Do you remember what if anything you said to him about Billie Curtis?

A. I probably told him that I——

The Court: Not what you probably told him.

The Witness: I am sorry. I didn't mean to use that term, your Honor. I told him that I had talked to Billie Curtis and that Billie Curtis had admitted being carried up on the roof by Don Turner.

Q. (By Mr. Williams): Did you talk to him about Alan Pomroy?

A. No, sir. I don't remember talking to him about Alan Pomroy.

Q. Didn't you say to him that Alan Pomroy admitted to you that Don Turner did the stunt of climbing up on the roof?

A. I may have—I am not sure.

Q. Well, what is your best recollection?

A. Many people admitted that same thing.

Q. I am asking you about a conversation with Mr. Files as to what you told him.

A. I may have, yes, sir.

Q. Well then, your best recollection is that you did tell him that Alan Pomroy had admitted to

(Testimony of Jules Garrison.)

you that Don Turner did the stunt of climbing up on the roof? [89]

A. I may have—I am not sure.

Q. Well, what is your best recollection?

A. Many people admitted that same thing.

Q. I am asking you about a conversation with Mr. Files as to what you told him.

A. I may have, yes, sir.

Q. Well then, your best recollection is that you did tell him that Alan Pomroy had admitted to you that Don Turner did the stunt of climbing up on the roof?

A. I can't be sure whether I said that or not, sir.

Q. Did you also tell him that you had a tape recording of the conversation you had with Alan Pomroy?

A. I don't remember telling him that, sir.

Q. Well, would you say you did or did not tell him that?           A. I would say I did not.

Q. You are definite on that subject, are you?

A. At this late date I am not definite about anything, sir.

Q. Well, did you in fact have a tape recording of a telephone conversation with Alan Pomroy?

A. No, sir.

Q. So if you did tell him that it was not the truth?

Mr. Dryden: That is objected to on the ground it is argumentative, your Honor. [90]

The Court: It is argumentative.

(Testimony of Jules Garrison.)

Mr. Williams: I think so. I think the argument has already been made.

Mr. Dryden: I don't follow Mr. Williams but I make my objection for the record, your Honor.

Q. (By Mr. Williams): Did you tell him that you had a part of the wardrobe that had been used in the picture which you were prepared to produce as evidence?

A. Sir, I would like to answer that another way.

Q. Answer me whether you told him that.

A. Yes.

Q. And did you in fact have a part of the wardrobe? A. No, sir.

Q. Did you tell him that you would be willing to forget that you could prove these things if Warner Bros. would give you some money?

A. I worded it much differently, sir.

Q. How did you word it?

A. I said I would take less than \$1,000,000.

Q. Did you say what amount you would take?

A. Not exactly, no.

Q. Did you say to him that you wanted to go to New York for the current theatrical season and try to work there and in order to accomplish that you needed a suit of clothes and transportation and some spending money? [91]

A. I don't remember that, sir. I might have.

Q. You say you may have said that?

The Court: Do you remember whether you said any such thing?

The Witness: Yes, I would say I said it.

(Testimony of Jules Garrison.)

Q. (By Mr. Williams): Yes. And you said that under those circumstances that you thought that the attorneys for Warner Bros. would understand your position and possibly something could be done for you without the necessity of your taking any action which would publicize the claim, is that correct?

A. For their benefit as much as mine, sir.

Q. Did you mention any particular sum?

A. No, I don't think I did, sir.

Q. But you did say that if they would pay a sum which was satisfactory to you, that you would not bring an action and that you would not publicize the matter, is that correct?

A. I don't remember saying anything—no, there is a misunderstanding about that, sir, about the publicizing. I said that I didn't want the publicity any more than they did—that kind of publicity.

Q. And you would settle—and if they would settle for an amount satisfactory to you you wouldn't cause any publicity, is that it?

A. No, sir. I said that I did not want the publicity [92] any more than they did because that is not the type of publicity that they want and it most certainly isn't the kind that I want.

Q. Did Mr. Files say—did you tell Mr. Files that you had employed an attorney in the matter?

A. I said that I was going to. I said—

Q. Did you tell him that you had employed an attorney named Mr. Levoy?

A. I don't remember, sir.

(Testimony of Jules Garrison.)

Q. Didn't Mr. Files say to you that if you were represented by an attorney that he could not discuss the matter with you at all?

A. Yes. At that time I had spoken to one or two attorneys but I hadn't any contract with them.

Q. Didn't you say to him that you didn't want to split this up with any attorney and you would dispose of the attorney and he said: "Well, I can't talk with you as long as you have an attorney."

The Witness: Your Honor, that is a telephone conversation of three years ago. I am not sure of those things.

Q. (By Mr. Williams): I am asking you for your best recollection.

A. I don't know, Mr. Williams. It sounds to me like perhaps Mr. Files took a tape recording of my conversation if he remembers it that well.

Q. Well, let us not discuss that. I move to strike that, if your Honor please, as not responsive to the question.

The Court: What difference does it make?

Mr. Williams: It doesn't make any difference.

Q. (By Mr. Williams): But did you tell him or did he tell you, rather, that he would decline to discuss the matter with you as long as you were represented by an attorney? A. Yes.

Q. And did you then tell him that you didn't want an attorney anyway and that you were going to discharge your attorney?

A. I didn't have an attorney, sir.

(Testimony of Jules Garrison.)

Q. I know, but I am asking you what you told him.

The Court: Did you say that?

The Witness: (No answer.)

Q. (By Mr. Williams): You told him you were going to discharge your attorney?

A. I told him I had—if I told him I had one I would have told him I was going to try to—

Q. Well, do you remember what you did tell him? A. No, sir, I don't.

Q. Isn't it a fact then that you did thereafter, on about the 12th of October to be exact, about three days after the first conversation, call Mr. Gordon Files again and tell him that you no longer had an attorney and you wanted to talk [94] the matter over with him?

A. I do not remember, sir. I don't remember calling him twice.

Q. Would you say you did not call him the second time?

A. No, sir, I wouldn't say that I did not.

Q. And isn't it a fact that in your second conversation Mr. Gordon Files told you that he had in the meantime looked into the matter and he told you that Warner Bros. had made no offer of \$1,000,000. Isn't that correct?

A. No, sir, it is not correct.

Q. Isn't it a fact that he told you if any such offer had been made or thought any such offer had been made he wanted you to know it was withdrawn? A. No, sir.



(Testimony of Jules Garrison.)

Q. Did he also tell you it was a fact that Burt Lancaster had done all of his daring stunts in the picture *The Flame and The Arrow*?

A. No, sir.

Q. Did any part of that conversation take place between you and Mr. Gordon Files?

A. No, sir.

Q. And you are not clear as to whether you did in fact have a second conversation with him?

A. The only time I talked to him, Mr. Williams, I left it up in the air. I said if I did not hear from him [95] and I left my telephone number—

The Court: He is asking you a question. What is your best recollection? Did you just have one conversation with him or did you have two?

The Witness: I am not sure, your Honor, I am not sure.

The Court: Is that your best recollection?

The Witness: I may have had three, your Honor. Yes, your Honor, I probably had more than one conversation with them.

Q. (By Mr. Williams): Isn't it a fact that on the second conversation, after Mr. Files had told you that Warner Bros. had made no offer, and that he understood that if there was an offer he wanted you to know it was withdrawn, and, in addition to that, Lancaster had done his own stunts, didn't you then tell him that you wanted him to think it over and that you would give him a week, and if you hadn't heard from him in a week, you would employ an attorney?

(Testimony of Jules Garrison.)

A. No, sir, it doesn't seem to me that was the way we worded it.

Q. How did you word it?

A. He said, he denied any knowledge of what I was talking about. He said they would look into it, and I said I would like to hear from them in two weeks.

Q. It is a fact, is it not, that in the first conversation Mr. Files told you he had no knowledge of the matter [96] at all, and he would have to look into it; is that correct?

A. That's correct.

Q. And isn't it a fact that in the second conversation he told you that he had looked into it, and that Warner Bros. had made no such offer?

A. I don't remember.

Q. And it was after that you told him you would give him this week to do something about it?

A. No, sir, I do not remember any such conversation.

Mr. Williams: I have no further questions.

#### Redirect Examination

Q. (By Mr. Dryden): Mr. Garrison, did you, in your capacity as an extra out there work on any of the pictures in the capacity of an extra at the time that the sequence was made with Dardo carrying the boy across the roof?

A. At the very beginning of it, yes.

Q. What part are you referring to?

(Testimony of Jules Garrison.)

A. Well, just as we were going home one day, they rigged up——

Q. I am talking about the picture.

A. The picture, yes. They did the scene where the six stunt men fall—the six stunt men fall; that is, as Burt Lancaster or Don Turner, or whoever it was, ran up the [97] ladder and to the side of the roof. The first part of that scene was photographed, but we had quit and were on the way home, and I have a very hazy recollection of seeing it, and that's all.

Q. Were you there on the scene working at the time that this sequence of running across the top of the roof was made?           A. No.

Q. Were you there with relation to the fight in the court yard with the saplings, when Papa Pietro was rescued, was filmed?

A. No, sir, I was not.

Q. Were you there working on either one of those occasions?           A. No, sir.

Q. Were you there at the time the sequence was filmed when Alessandro and Dardo engaged in the duel in which Alessandro was killed?

A. No, sir. I would like to make one addition to that. I may have been there when something was going on. What I mean to say is I may have been on the pay roll, actually working the same day, but I was not there where I actually saw anything.

Mr. Dryden: That is all.

The Court: Is that all? [98]

(Testimony of Jules Garrison.)

Mr. Williams: Nothing further.

The Court: We will take a five-minute recess, gentlemen.

(A short recess was taken.)

Mr. Dryden: Will you take the stand again, Mr. Garrison? I neglected something.

Q. (By Mr. Dryden): At the time that you contacted Mr. Marcus as your attorney in this matter, you already told us he wrote this letter to Warner Bros. pursuant to your authorization; is that correct?      A. Yes, sir.

Q. And at that time did you inform Mr. Marcus as to the sequences that you felt you could prove were not performed by Burt Lancaster?

A. Yes, sir.

Mr. Williams: That is objected to as hearsay and entirely immaterial.

The Court: I don't see what the materiality is, anyway.

Mr. Dryden: That is all, your Honor.

The Court: Any questions?

Mr. Williams: No questions.

The Court: That is all.

(Witness excused.)

Mr. Dryden: That is all the evidence the plaintiff has on the issue of the offer and the acceptance, your Honor, [99] which I believe your Honor indicated was the issue you wanted to hear the evidence on in the first instance.

Mr. Williams: I had anticipated, and counsel for the plaintiff indicated to me that he would take

all of today to put on his evidence, and I know he did so in good faith. I could put on Mr. Files as soon as he returns. He has stepped out for a few moments. Then I won't have any additional witnesses this morning.

Mr. Dryden: I told Mr. Williams, when I anticipated putting on my entire case, that I felt that it would take two days. That included the other issue of the stunts, and so forth. I have witnesses on that.

The Court: Are you ready to put on your other part of the case?

Mr. Dryden: Yes, sir.

The Court: Let's proceed with that, and complete your case, then.

Mr. Dryden: All right. I will call Mr. Don Turner.

#### DONALD TURNER

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

The Clerk: Will you please state your name?

The Witness: Donald Turner. [100]

The Clerk: Donald T-u-r-n-e-r?

The Witness: Yes.

The Clerk: Take the stand, please.

Q. (By Mr. Dryden): Mr. Turner, you were subpoenaed in this matter on behalf of the plaintiff; is that correct?      A. Yes.

Q. What is your occupation?

(Testimony of Donald Turner.)

A. I do doubling and stunt work in the picture business.

Q. How long have you been engaged in that field? A. Approximately 20 years.

Q. Particularly, directing your attention to *The Flame* and *The Arrow*, did you work in that picture? A. I did.

Q. In that picture did you double in some sequences for Burt Lancaster? A. I did.

Q. Now, you were present here in the court room yesterday when we showed the picture, *The Flame* and *Arrow*; is that correct? A. Yes.

Q. And you had seen that picture on previous occasions? A. Yes.

Q. You had seen the picture at Warner Bros. in the [101] company of Mr. Pomroy some two or three weeks ago, hadn't you? A. Yes.

Q. When was the first time you saw the picture with relation to the time that it was photographed?

A. Shortly after the picture was completed and cut.

Q. Do you recognize the picture that you saw here in court as being the same identical picture as the first one you saw?

A. I would say so, yes.

Q. Now, particularly directing your attention to the character Dardo, do you recall the sequence in it where Burt Lancaster, in the part of Dardo, shoots an arrow which purports to hit the falcon?

A. Yes.

(Testimony of Donald Turner.)

Q. In the court yard? A. Yes.

Q. And then shortly after that Ulrich tells the soldiers to seize the boy. Do you remember that sequence? A. Yes.

Q. Now, there was a sequence immediately following that that shows Dardo running across the top of this peaked roof, shortly before the time that he is struck by an arrow. Who played the part of Dardo running across the roof with the boy in his arms in that sequence? [102]

A. I doubled for Mr. Lancaster running across the roof.

Q. And that was you portrayed on the rooftop; is that correct? A. Yes.

Q. With relation to the character Rudie, that is, the boy, do you remember who it was that you carried across the roof at that time?

A. Yes, I remember.

Q. Who was it? A. Billie Curtis.

Q. Is that Billie Curtis, the midget?

A. Yes, sir.

Q. Now, directing your attention to the sequence where the soldiers ride—or, not the soldiers, but the band rides into the court yard to rescue Papa Pietro with these sapling spears,—do you recall that? A. Yes.

Q. All right. Now, in going into the court yard there with the spears, and in this hand-to-hand encountering, what character did you portray?

A. I doubled for Burt Lancaster in the part of Dardo

(Testimony of Donald Turner.)

Q. Then you were the character Dardo?

A. I rode into the square.

Q. And in the course of that sequence there, you [103] engaged in some part in the fight with the soldiers, where you were using the sapling spears; is that correct?

A. Enough to bring the two factions together.

Q. And then in that following sequence, where the character Dardo jumps on to the oxcart and cuts Papa Pietro down, and drives the team out of the square, what part did you play in that sequence?

A. I doubled for Burt Lancaster.

Q. In the character of Dardo?

A. In the character of Dardo, and I drove one horse out, not a team.

Q. Now, getting along to the next sequence, and that is the one involving—do you recall near the end of the picture is where there is a sword fight between Alessandro and Dardo that occurs there at the time that Dardo kills Alessandro?

A. Yes.

Q. Now, that was the one that occurred in the castle shortly before the time that Ulrich was killed by the bow and arrow by Dardo; isn't that right?

A. Yes, I think so. Yes.

Q. Now, in that sword fight or duel, particularly as it related to the shots that were taken showing the two men dueling, where it was taken from the back of the character Dardo and showing the face view of Ulrich—I mean of [104] Ales-



(Testimony of Donald Turner.)

sandro, were you playing the part of Dardo in that sequence at that time?

A. I think I worked in two shots that we saw in the picture.

Q. In that duel, with your back to the camera; is that correct?      A. That is correct.

Q. Were you there at the time that these purported arrow shots were made with relation to the piercing of the falcon, and the shooting of Ulrich?

A. I think I was on salary on the picture. I didn't actually see it being done.

Q. Now, with relation to these particular shots, let's take the roof shot, for example——

Mr. Williams: Just a minute. You used the word "shot" in connection with the arrow, and now you are using the word "shot" in another way.

Mr. Dryden: I will reframe it.

Q. (By Mr. Dryden): I am not speaking about shooting an arrow. You said you don't recall being there watching that scene?

A. No, I wasn't.

Q. In this situation where you carried Billie Curtis across the roof, you were on stunt man's pay at that time, were you? [105]

A. I am always on stunt man's pay, as you call it; that or a double's pay, at any time I work in the studio.

Q. Then, in addition to that, when you are

(Testimony of Donald Turner.)

working, if you do something such as a stunt, you will receive a pay adjustment; isn't that right?

A. You receive adjustments for your ability to save time, your knowledge as a person doing doubling work, and for additional—well, work, in any sense you might want to phrase it.

Q. With relation to the sequence of running across the roof with Billie Curtis, you did receive additional or adjustment pay of \$145 approximately for that sequence; isn't that correct?

A. I received more money. I don't know what it was per day.

Q. In the sequence when you were engaged in the dueling, you received more money; isn't that correct?  
A. I always do.

The Court: What do you mean, you always do?

The Witness: My salary is known through the studios for doing fencing, as above the minimum of \$70 a day, and I get a minimum of \$100 a day.

The Court: When you do fencing?

The Witness: When I do fencing, because there is an adjustment. [106]

The Court: How about this roof incident? Did you get any extra pay for that?

The Witness: I did, yes, sir.

Q. (By Mr. Dryden): And with relation to the fight with the saplings, when you came into the court yard and rescued Papa Pietro, you received extra pay for that, didn't you?

A. I did.

(Testimony of Donald Turner.)

Mr. Dryden: I have no further questions, your Honor.

Cross Examination

Q. (By Mr. Williams): Mr. Turner, with reference to——

The Court: Just a moment. Mr. Turner, you were employed by Warner Bros., were you, at that time?

The Witness: Yes, sir.

Mr. Williams: Your Honor please, I hate to disagree with the witness, but he was not employed by Warner Bros.

Mr. Dryden: Now, wait a minute.

Mr. Williams: He was employed by Norma Productions.

The Court: Oh, I agree with that.

The Witness: I am sorry.

The Court: Who are you employed by now?

The Witness: I am not working right at present. I work at the various rates. [107]

The Court: Wherever they happen to need you, in any studio?

The Witness: In any of the various studios.

The Court: You may proceed.

Q. (By Mr. Williams): Your last job I think you said was with Paramount?

A. Yes, I worked a week ago. I was on the Bob Hope show at Paramount.

Q. Your work, as I understand it, for about 20 years was that of a double and stunt man?

A. That is correct.

(Testimony of Donald Turner.)

Q. And you demand and receive compensation over and above the union scale for the work you do, either as a double or a stunt man; is that correct? A. Yes.

The Court: Just a moment. Is there a differential between doubling and a stunt man's pay? You say you are a stunt man and a double. Is there a distinction in your pay when you do stunts over doubling?

The Witness: If it is a hazardous thing, it might run into hundreds of dollars or into—well, I receive a thousand dollars. To do just ordinary work that we go in and do, our minimum salary per week is \$300 a week, or a minimum of \$70 a day.

Q. (By Mr. Williams): Do you belong to the Screen [108] Actors' Guild? A. I do.

Q. Now, with reference to the scene that you saw of the picture here showing the men with the lances or tree limbs coming into the court yard, you saw yourself in that scene, did you, as you came into the court yard? Did you see yourself?

A. Well, I know what I did,—I mean, I can find it, where maybe someone else couldn't. I rode into the square.

Q. There was one close-up of the character Dardo there, which was Burt Lancaster, was it not?

A. Yes.

Q. As you saw it in the film, the only close-up of the character Dardo, as it came into the film, was that of Burt Lancaster?

A. That's right.

(Testimony of Donald Turner.)

Q. Yes. Now, it is a fact, is it not, in the filming of the picture you rode in with these horsemen, and then you actually rode out of the scene, and there was a melee which took place, and you later rode back into the scene, and stepped on to the cart, and cut down Papa Pietro?

A. That's correct.

Q. So that while most of this melee and fight was going on, you, in the character of Dardo, were actually [109] standing on the sidelines waiting for your entrance to come in to rescue Papa Pietro?

A. Yes, I would say that is correct.

Q. And it is correct, is it not, if I say that the only scene which actually showed the character Dardo close up in action was, where you could tell who it was in the melee, that one close-up showing Burt Lancaster? A. Yes.

Q. Now, with reference to the step-off from the horse onto the cart, is it a fact that Terry Wilson, a stunt man, was at the time holding the head of the horse that was attached to the cart?

A. Yes.

Q. And the cart was stationary? A. Yes.

Q. It was a low bed upon which you stepped?

A. Yes.

Q. And when you stepped onto that low bed, you stepped from a horse you had just instantly brought practically to a stop, and then you stepped onto it? A. That is correct.

Q. Now, in addition to the work that you ac-

(Testimony of Donald Turner.)

tually did that was portrayed on the screen that day, you also participated in setting up that stunt, did you not?      A. I did. [110]

Q. In other words——

A. If you would call it a stunt.

Q. I mean the whole action?      A. Yes.

Q. The whole action that took place, the melee, the fight, was set up and rehearsed?      A. Yes.

Q. In other words, you determined in advance what each person would do as well as you could?

A. Yes.

Q. In view of the fact you were working with horses you had to, but you undertook to work out what each person would do and you assisted in that work?      A. Yes.

Q. And it is a fact, is it not, that every man who worked in that scene was a man who was paid extra for stunt work or paid extra for his participation in that work that day?

Mr. Dryden: Just a minute. May I have that question read back?

The Court: Read the question, Mr. Reporter.

(Question read.)

Mr. Dryden: That is objected to on the ground it calls for an opinion and conclusion and is immaterial so far as the issues in this case are concerned. [111]

The Court: If he knows he may answer. Do you know?

The Witness: Yes. I will say yes.

Q. (By Mr. Williams): Now, did you yourself

(Testimony of Donald Turner.)

—was it your opinion that the action that you did personally doubling for Lancaster in that particular scene, constitute a stunt?

Mr. Dryden: Just a minute. That is objected to, your Honor, upon the ground it calls for an opinion and conclusion which is determinative of the ultimate decision in this case.

The Court: I think your objection is good.

Mr. Williams: Your Honor has in mind that this man has been 20 years in the business.

The Court: Yes. I don't care if he has been in the business 40 years. He is employed as a stunt man and if he is doing work that was represented to the public to be that of Burt Lancaster I think it is false advertising. I don't care what opinion is, whether it is a stunt or not. If they represent to the public that Lancaster did certain things and somebody else did them that is false advertising.

Mr. Williams: That is undoubtedly true, your Honor. That isn't the question involved. The question is whether this was a stunt.

The Court: I have ruled on the objection.

Mr. Williams: I offer to prove then by this witness, if your Honor please, that he is an experienced stunt man [112] in the motion picture business; that he is of the opinion that the action in which he doubled for Lancaster in the scene that has just been described, namely, the scene in the square where Papa Pietro was rescued by the outlaws, that that action was not, in his opinion, a

(Testimony of Donald Turner.)

stunt as such stunts are known in the motion picture industry.

Mr. Dryden: To which offer of proof we interpose the same objection as we did to the question.

The Court: Same ruling.

Q. (By Mr. Williams): Now, we come, Mr. Turner, to the scene in which the character Dardo seizes the boy Rudie, that scene is a scene which starts with the words uttered by the character Ulrich: "Take the boy," and at that time the character Dardo seizes the boy Rudie, throws him over the backs or heads of several persons in the scene and then fights his way to the foot of a ladder and up the ladder, across a scaffolding which later falls, and climbing up on the slope of a roof to the crest of the roof.

You recognize that sequence which I have thus far described?      A. I do.

Q. Did you do any part of that sequence?

A. I did not.

Q. Was that done by Burt Lancaster?

A. It was. [113]

Q. There is then shown a distance shot against the skyline in which the character Dardo, purporting to carry the boy Rudie, walks from camera or audience right to audience left across the edge of the roof to a chimney and then beyond that chimney and disappears at the left of the camera. Do you recognize the scene as I have described it?

A. I do.



(Testimony of Donald Turner.)

Q. You played the part of Dardo in that particular sequence, did you?

A. I did, going across the roof.

Q. Which involved a run along the crest of the roof for a distance of 20 to 30 or 35 feet?

A. I would say around 25 foot.

Q. And at that time you were carrying the midget Billie Curtis? A. I was.

Q. Now, what were you actually running upon at that time?

A. If I may explain the way the roof was built—

Mr. Williams: If your Honor please, may we have a blackboard up here. We can probably set one up and it would be of assistance to the court.

The Court: Let him describe it. Maybe I can visualize it myself.

Mr. Williams: All right. [114]

The Witness: There was a set—the set was built which was what you see—what you see is actually a half of a building, the front part of it, and the roof was facing the camera. Now, in back of the crest of the roof was a platform, two 2 x 12 which from the camera you could not see and that was what I was walking on.

Beyond the platform was another—well, I think I could draw it out and show you easier than I can tell you. It is called a catwalk to put lamps on for another set. That is what it was. And that is, oh, approximately—oh, I would say four foot

(Testimony of Donald Turner.)

wide, maybe five foot wide which was just below that.

Q. (By Mr. Williams): And that second one, the one below that had a railing around it?

A. That is correct.

Q. And the railing was up almost to the height of the walk on which you carried the boy?

A. Yes.

The Court: Do I understand you ran across there carrying this midget and you were running on a platform?

The Witness: That is right. I was actually on the platform.

Q. (By Mr. Williams): And in your opinion as an experienced stunt man did that action on your part constitute a stunt? [115]

Mr. Dryden: That is objected to.

The Court: Same ruling, counsel.

Mr. Williams: We offer to prove by this witness that in his opinion as an experienced stunt man, the action which I have just described did not constitute a stunt as the word stunt is understood in the motion picture industry.

Mr. Dryden: Same objection.

The Court: Same ruling.

Q. (By Mr. Williams): Now, with reference to the duel in the corridor between the characters Alessandro and Dardo, my understanding is that that is called fencing in the motion picture industry.

A. That is correct.

(Testimony of Donald Turner.)

Q. Now, you participated in preparing or working up that particular scene, did you not?

A. I did.

Q. And did you work with Albert Cavens (phonetic), the fencing master or fencing instructor in that? A. I did.

Q. Did you work with any other fencing instructors in that?

A. Not on that particular picture.

Q. Just those two, you and Mr. Cavens?

A. Cavens laid out that sequence.

Q. When you laid out the scene—you mean to say [116] that you worked out a sequence of actions on the part of both parties which would result in the filming of a duel scene, is that correct?

A. Yes.

Q. Well now, just in your own language tell his Honor how this particular thing is laid out, as you put it—what is done with it.

A. Well, it is laid out the same as you would lay out a dance routine. Each move you know. Each move that you make with your hand and with your feet you know. I think that particular duel or fight or whatever you want to call it, was approximately, maybe 35 moves or something like that. I wouldn't say exactly how many moves but it is laid out in that manner.

Q. Having laid out the moves then the participants have to memorize the moves?

A. That is correct. We worked it out then I think it was Douglas, the actor—

(Testimony of Donald Turner.)

Q. Douglas taking the part of the character Alessandro?

A. Yes, and Mr. Lancaster come in and we taught them each one of the moves to do.

Q. So that they themselves then went through, after they had practiced and learned it, they went through this entire sequence?

A. That is right. [117]

The Court: Did Mr. Lancaster participate in that sequence?

The Witness: He did.

The Court: I thought you said you did?

The Witness: I worked in two shots in it. He did, I would say—well, of the footage that we saw on the screen, he did at least 95 per cent of it or maybe more in footage. The only time I worked in it, which is a convenience for the studio—

Mr. Dryden: Just a minute. I move to strike the word “convenience.”

The Court: I want to hear this, counsel.

The Witness: Which is a convenience for the studio, which we laid it out—we know the moves and can execute them probably a little easier so we worked opposite the actor, one actor, where they are shooting over your shoulder or vice versa, which just saves time and money—I mean time and money for the studio.

Q. (By Mr. Williams): It is a fact, is it not, that the way this thing was photographed, each of the two principal characters, that is, Alessandro

(Testimony of Donald Turner.)

and Dardo, played respectively by Douglas and Lancaster, went through the entire sequence?

A. They did.

Q. And photographs were taken of them and it is true also, is it not, that in the course of photographing that [118] you yourself fought against or went through the sequence against Douglas and that Cavens played the part of Alessandro, fighting or going through the sequence against Lancaster?

A. That is true.

Q. And the entire thing was shot as it was done over and over again many times?

A. That is correct.

Q. And in the final picture as it now appears, every one of the shots showing Lancaster in that picture, with the exception of two shots, actually showed Lancaster himself?

A. That is correct.

Q. And of those two shots they were shots taken facing Douglas where the character Dardo had his back to the camera and perhaps only a part of him appeared or his arm with a sword in it?

A. That is correct.

Q. And those are the ones in which you appeared?      A. That is correct.

Q. Now, in your opinion in the motion picture industry, regardless of whether you did it or Lancaster did it or anybody else did it, is the fighting of a duel under such circumstances denominated or called a stunt?

Mr. Dryden: Just a minute. To which we object,

(Testimony of Donald Turner.)

your Honor, upon the ground it calls for an opinion and a determination of the ultimate issue in this case and is asking for [119] a conclusion of the witness.

The Court: Counsel, I am going to permit one of these answers to go into the record subject to a motion to strike. I am going to overrule this objection subject to a motion to strike which I will take under consideration.

Mr. Dryden: May I have the question once more?

The Court: Read the question.

(Question read.)

The Witness: Well, I would say it isn't called a stunt for this reason. That it is an achievement that you have learned. We have bouting—fencing in competition. When they do that I don't think they are doing a stunt. We rehearse the sequence and we know each move that we are doing with our hands and our feet. In competition one boy or one girl doesn't know what the other is going to do. They are working for points and without masks. The swords or foils or sabres or whatever we might use, all have dull points. So, I would say it is no more than a person bouting as we do.

The Court: Were you getting stunt pay at that time?

The Witness: My minimum salary. I always receive more than a stunt man's pay for fencing because it is something that I have learned and was taught by Mr. Cavens, Sr.

(Testimony of Donald Turner.)

The Court: But you were getting paid for extra work of that kind? [120]

A. Oh, yes, yes, sir.

Q. (By Mr. Williams): As a matter of fact you were on salary at that time as a fencing instructor and had been for several weeks?

A. I think I was on it a couple of weeks, yes, on a weekly salary being carried by the studio, which it actually took maybe a half a day to shoot the sequence and I was there for two weeks.

Q. Now, you did not portray the character Dardo at the time the arrow was shot at the falcon, did you? A. I did not.

Q. You saw the picture that was portrayed by Mr. Lancaster? A. Yes.

Q. And the same thing is true of the time the arrow was shot which ultimately struck Ulrich as in the picture and that actual shooting of the arrow was done by Mr. Lancaster, was it not?

A. Well, that is done by a special effects, the actual hitting.

Q. No, I am talking about the pulling of the bow. A. Yes, he did that.

Q. Do you know how they do the actual hitting of a person with an arrow in a situation like that?

A. Yes, sir. [121]

Q. How is that done?

A. Well, that particular one was done with a wire and a hollow arrow and they stand in back of the camera. They take a slingshot or an air gun. They use many things to shoot the arrow and it

(Testimony of Donald Turner.)

slides down the wire and into a piece of balsa wood that is put under your clothes with a steel plate in back of it and it sticks into it.

Q. And do you remember the sequence where the character Piccolo played by Nick Kurvath (phonetic) and the character Dardo played by Lancaster, were escaping and in the scene it was shown that a spear whizzed past the head of Lancaster?

A. Yes.

Q. Was that spear carried in the same way on a wire? A. No, it wasn't. It was thrown.

Q. That was thrown? A. It was.

Mr. Williams: I have no further questions of this witness.

The Court: Any further questions?

Mr. Dryden: Just one second, if your Honor please. No, no further questions, your Honor.

The Court: That is all.

Mr. Dryden: Your Honor, our difficulty again is that we are out of witnesses. We have one witness who will be the only one we will have this afternoon. I regret it. I know [122] your Honor's feelings on the time element.

Mr. Williams: May I ask counsel will that be your last witness, one more witness?

Mr. Dryden: Yes.

Mr. Swartz: Are you going to produce Mr. Pomroy?

Mr. Williams: I have no intention of calling Mr. Pomroy at this state of the record.

Mr. Dryden: I thought we had a stipulation that



insofar as the witnesses who work at Warner Bros. Studio are concerned, that they would be available and on call.

Mr. Williams: Certainly, if you want him. Counsel asked me if I was going to call him.

Mr. Dryden: No, no.

Mr. Williams: Certainly I will call him if you want him. Do you want him here at 2:00 o'clock?

The Court: Is that going to be your last witness?

Mr. Dryden: Yes, sir.

The Court: You are not going to call Mr. Lancaster?

Mr. Dryden: That will be my last witness plus some portions of a deposition that was taken by the adverse side with relation to corroboration of Mr. Turner's testimony, relative to the sequence in which he portrayed the part of Dardo.

Mr. Swartz: Maybe we can use that in rebuttal if there is any dispute. [123]

Mr. Williams: Do I understand you are not going to call Mr. Lancaster?

Mr. Swartz: I think we won't know until maybe a half hour. I would like to discuss that with Mr. Dryden before we make that answer.

The Court: Of course, I am in this court room every day, and I don't like to see time wasted by not having witnesses present.

Mr. Dryden: Your Honor admonished me about that situation, and I regret it. You can appreciate this is a kind of a nip and tuck situation with relation to the matter of exercising judgment in calling

witnesses, and, particularly, when you have not had an opportunity to see or talk to the witness until he takes the witness stand.

The Court: As I understand it, you have one more witness?

Mr. Dryden: Yes, Mr. Pomroy. He was requested to be here at 2:00 o'clock. He is an employee of Warner Bros., and they assured me that rather than tie up the studio, they would have him on notice.

Mr. Williams: That is right.

The Court: There is no deposition that can be read?

Mr. Dryden: Well, the depositions were taken by the plaintiffs here of the men going out of state. Now, the probabilities are, and I am anticipating, that the depositions [124] will be read by them, and they won't be offered in evidence except by way of rebuttal, and then only certain selected parts.

The Court: You can't offer a part of a deposition, counsel.

Mr. Dryden: As I understand the rule——

The Court: The court is entitled to the benefit of this entire testimony. You can't pick out some sentence that you think will help you and not consider the balance.

Mr. Swartz: No, but under Rule 26(d)4, I think that is the rule, we can offer that part of his testimony which we deem to be or on which we want to make him our witness, and they have the right to offer the balance, if they want to make him their witness for that portion of the deposition.

The Court: If there is going to be any deposition offered, why not read it now?

Mr. Swartz: We will stand on the record, as it now stands, with respect to Mr. Turner, without reference to that.

The Court: Then we will recess until 2:00 o'clock. That means you will stay here later this evening to make up the time.

(Whereupon at 11:40 o'clock a.m., a recess was taken until 2:00 o'clock p.m.) [125]

Wednesday, July 22, 1953, 2:00 p.m.

The Court: You may proceed.

Mr. Dryden: At this time, your Honor, the plaintiff would offer in evidence Exhibits 3 and 7, which have heretofore been marked for identification.

Mr. Williams: With reference to Exhibit 3, we object to that on the ground no proper foundation was laid, that it is simply a newspaper article, and there is no evidence as to who prepared it, and who is responsible for it.

The Court: The objection is overruled.

(The document referred to heretofore marked Plaintiff's Exhibit 3, for identification, was received in evidence.)

[See page 305.]

Mr. Williams: As to No. 7, I have forgotten what No. 7 is.

Mr. Dryden: That is the agreement.

Mr. Williams: We object to it on the ground

it is immaterial, and wholly irrelevant to any issue in the case.

The Court: That is true. We haven't heard about it in the evidence.

Mr. Williams: Then I assume your Honor has sustained the objection?

The Court: You are correct in your assumption.

Mr. Dryden: We have reviewed our notes in this matter, [127] your Honor, and at this time the plaintiff rests. I have informed Mr. Williams of that before the noon hour, so that he would have his witnesses here.

Mr. Williams: Mr. Files.

#### GORDON L. FILES

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

##### Direct Examination

The Clerk: Will you state your name, please?

The Witness: Gordon L. Files.

Q. (By Mr. Williams): What is your occupation, Mr. Files?

A. I am an attorney-at-law.

Q. You are associated with any firm of attorneys?

A. Yes, I am a member of the firm of Freston & Files, who are attorneys of record for the defendant here.

Q. You were a member of the firm during the month of October, 1950?           A. I was.

(Testimony of Gordon L. Files.)

Q. On that date did you have a conversation with a gentleman by telephone, who introduced himself as Jules Garrison? A. I did. [128]

Q. Did you, following that conversation and immediately thereafter, make notes of the substance of the conversation? A. I did.

Q. The conversation took place, I think you said, on October 9th, 1950?

A. That is correct.

Q. About how long was the conversation in length of time?

A. I would say approximately 20 minutes, although I didn't time it accurately.

Q. Yes. Are you able to give the full substance of the conversation without reference to your notes?

A. I believe I can.

Q. Will you do so, then, telling us what was said by Mr. Garrison and what was said by ourself?

A. Mr. Garrison gave me his name, and stated that he was calling for the purpose of talking to someone who was an attorney for Warner Bros. And I told him I was one of their attorneys.

He then proceeded to tell me that he had learned of some advertising which had been put out stating that Warner Bros. would pay a million dollars to anybody who could prove that Burt Lancaster had not done all of the stunts that were credited to him in the motion picture *The Flame and The Arrow*.

I said something to the effect that I wasn't fa-

(Testimony of Gordon L. Files.)

miliar [129] with that, and Mr. Garrison then proceeded to tell me more.

He said that he had worked on the picture as an extra; that he knew about this offer having been made, and that he believed that he could prove that Mr. Lancaster had not done certain of the stunts.

The ones he referred to particularly, and that he mentioned in that phone conversation, were three. One was, he said, climbing up on to the rooftop with the little boy. Mr. Garrison said that was done by Don Turner and by Billie Curtis, a midget. He said he did not know whether he could get those people to testify for him or not, but that he knew that those people had done that, and that they would have to say that.

The second thing he mentioned was horseback riding. He said he knew that Mr. Lancaster had not done some of the horseback riding and that the Hudkins brothers, who had furnished the horses would be willing to say that they helped Don Turner get on one of the horses for one of the sequences in the picture.

He told me that he had talked to Alan Pomroy about this; that Alan Pomroy had admitted that it was Don Turner who had climbed up on the roof of the house and that he, Garrison, had a recording of his conversation with Mr. Pomroy.

He said he knew that Don Turner's name had been mentioned on the call sheet out at the studio for certain days, [130] indicating that Mr. Turner had worked on this picture.

(Testimony of Gordon L. Files.)

He said that we would probably find out in the wardrobe a duplicate Dardo costume which had been made up for Don Turner.

Mr. Garrison said he had a piece of that costume. He then went on to say that he didn't want to make trouble for Warner Bros., although he did also state that, a little later in the conversation, that he had in the years past been a stock player out there and that one of the executives of the company he didn't like and that he thought the executive had not treated him right and he would like to see something happen to that fellow. But he said aside from that he had nothing against Warner Bros. He didn't want to give publicity to this offer and didn't want to give publicity to the things he said he could prove and he said after all: "I work in the motion picture industry and I don't want any trouble over there or any publicity over this." He said: "What I would like to do is go to New York. The theatrical season is just starting back there and I would like to get back there for the season. If you could arrange for Warner Bros. to buy me a ticket to New York and a suit of clothes and some change to put in my pocket I will go to New York and there won't be any publicity about this."

He said: "As an attorney I am sure you can appreciate the importance or the advantage to your client of *handling* [131]

He also stated that he had gone to the office of the Daily Variety in Hollywood with the intention

(Testimony of Gordon L. Files.)

of making a public proclamation of his claim for \$1,000,000 but that the people at Variety had refused to publish his statement. They had suggested that he go to an attorney.

He stated that he had been to see an attorney; that the attorney apparently wanted him, Garrison, to do all the work so he didn't see any point in splitting the money to be derived with the attorney. He said: "Anyway I would rather get 10 per cent in a hurry than to get a lot more money over a long period of time."

I told him that if he was represented by an attorney of course I couldn't discuss it with him at all. He said he was not represented by an attorney; that he had merely talked to one and that the attorney had told him what he ought to do was get an investigator and go to work on this thing and then come back and talk to the attorney after he had done his work with the investigator.

He talked to me at considerable length about the advantages to Warner Bros. of giving him the ticket to New York, the suit of clothes and the pocket money to get him out of town.

I told him that I didn't know anything about this, hadn't seen the picture and didn't know the circumstances.

He said that he would like to have me look into it and [132] he would call me later. I said that was perfectly all right, that he was free to call me at any time provided he was not represented by an attorney. If he was represented by an attorney



(Testimony of Gordon L. Files.)

then, of course, I wouldn't discuss the matter with him.

Q. Was that the substance of the conversation as you remember it?           A. Yes.

Q. Now thereafter did you have another talk with this same man?           A. I did.

Q. And how soon after the first talk was the second talk?

A. The second one was three or four days later.

Q. Was that a telephone conversation?

A. It was.

Q. State the substance of that conversation.

A. Mr. Garrison or a person who introduced himself as Jules Garrison, and it was the same voice that I had talked to the first time, telephoned me at my office, got me on the phone and asked me what we had decided to do. I told him that I had made some investigations and it was our position that no offer had been made; that if he thought there had been any offer made it is withdrawn and he should consider it withdrawn. [133] I told him further that I had made some investigation as to how the picture had been made and that it was our understanding that Mr. Lancaster had performed all of his own stunts in the picture.

Mr. Garrison said he could prove the things that he had talked to me about in the previous conversation and that if he couldn't make an arrangement with us he was going to employ an attorney. He said that he would give us a week to think it over.

(Testimony of Gordon L. Files.)

I think again he mentioned that he would prefer to handle it directly and not have an attorney in on it. He said that if he didn't hear from us in a week he was going to go to an attorney.

Q. Was that—is that your recollection of the substance of that conversation?           A. It is.

Q. And was that the last conversation you had with him on that subject?

A. That is the last conversation I had with Mr. Garrison, yes.

Mr. Williams: May I have Exhibit No. 8?

Q. (By Mr. Williams): I show you now Exhibit No. 8 in this case and ask you whether you have seen this before?

A. Yes. I received that at my office on or about October 26, 1950. [134]

Q. You received that from Mr. Obringer at the studio?

A. Yes. It was sent to me by Mr. Obringer. I think I had been told previously by Mr. Obringer that he had received it and was sending it on to me.

Q. And did you have any communication with Mr. Marcus following the receipt of that letter?

A. Yes. After the letter came into the office I placed a telephone call for Mr. Marcus. I am not sure whether I reached him. I am under the impression that I called his office and found him out and left word at his office for him to call me and I believe a short time later, the same day, Mr. Marcus then telephoned me.

Q. Did you have a conversation with Mr. Mar-

(Testimony of Gordon L. Files.)

cus at that time? A. I did.

Q. And what was the substance of that conversation?

A. I stated to Mr. Marcus that we had received his letter dated October 20th, 1950; that our position was that Warner Bros. had made no offer; that if any offer should be deemed to have been made in the past, it had been revoked, and, furthermore, I told him that Mr. Garrison was mistaken as to the facts, that Mr. Lancaster had actually done all of his own stunts in the picture, *The Flame and The Arrow*.

Q. Was that the substance of the conversation?

A. Yes, it was. [135]

Mr. Williams: You may cross examine.

#### Cross Examination

Q. (By Mr. Dryden): Mr. Files, I think you said you made notes and memoranda of the conversations?

A. I dictated a rather lengthy memoranda of the first conversation.

Q. I notice that you had what would appear to be a memorandum with you as you took the stand?

A. Yes, I have it here with me at the stand.

Q. And I assume you refreshed your memory from that prior to taking the stand, at least some few weeks or days? A. That is correct.

Q. May I see it? A. Certainly.

(The memorandum was handed to counsel.)

(Testimony of Gordon L. Files.)

Q. In the course of that conversation, he told you that one of the reasons he wanted to discuss this matter with you was he knew that if there was any publicity or litigation about this matter, he would be blackballed in the industry; is that right?

A. I don't recall the use of the word "blackballed." He may have said it. But he said something along that line.

Q. To the effect that he would never be able to work [136] again in the industry for any company?

A. He said that, yes.

The Court: And when he spoke to you over the telephone the first time, did he say anything about accepting the offer?

The Witness: No, he didn't use that word.

The Court: Did he say, in substance, he accepted the offer?

The Witness: No, he didn't.

Q. (By Mr. Dryden): Well, he told you that he had seen that publicity with relation to the million-dollar offer, didn't he?

A. Yes, he did.

Q. And he told you that he could prove that Burt Lancaster didn't do some of the stunts in the picture, didn't he?

A. Yes, he said that.

Q. And he told you that he had called Warner Bros. and had been referred to you?

A. I am not sure that he said that. If that is in the memorandum, that is correct.

Q. Well, I didn't notice it in the memorandum,

(Testimony of Gordon L. Files.)

but do you recall such a thing in the conversation, on the basis of which he called you?

A. No, I have no recollection of his telling me how he happened to call our office. [137]

I know when he called our office he just asked the switchboard operator to talk with the attorney for Warner Bros. and so she picked one and put me on the line.

Q. In that respect, in one of these conversations he talked to you about the fact that in view of what he felt he could prove, rather than to wait a longer time for more money, he would be willing to compromise his claim by reason of this publicity that he claimed would be made; isn't that right? A. No.

Q. Didn't you tell us a few minutes ago that he discussed the proposition of his taking 10 per cent?

A. He mentioned in passing that it would be better to take 10 per cent than to call an attorney in on it and have to go through a trial.

Q. Well, he was then discussing with you the proposition of receiving money by reason of what he had discovered with relation to this picture; isn't that correct?

A. That isn't the way I took it.

Q. Well, when he called you up, he told you he had seen the publicity for a million dollars; isn't that right? A. Yes.

Q. And he told you that he felt he could prove that Burt Lancaster hadn't done all the stunts;

(Testimony of Gordon L. Files.)

isn't that correct?      A. Yes. [138]

Q. And he discussed the question of a million dollars, and also the question of 10 per cent of a million, didn't he?

A. No, I wouldn't say he discussed that.

Q. Didn't he say he would be willing to take 10 per cent rather than to wait for litigation?

A. No. He said it would be better to take 10 per cent than wait for litigation, but what he wanted was to go to New York, some change in his pockets, and a new suit of clothes, and then he would forget about it.

Q. He would forget about his claim with relation to this matter?

A. I assumed that was what he was going to forget, among other things.

Q. And in the course of that discussion the term of 10 per cent was used?

A. Not at that point, no.

Q. Was it used at a later point?

A. I can't tell you with reference to before or after some other phase of the conversation. The reference to 10 per cent was simply in his philosophy as to whether or not you ought to hire a lawyer in a matter of this kind.

Q. At the conclusion of that conversation, he told you that he would call you back at a later time, and determine what you were going to do with relation to his claim; isn't that right? [139]

A. Yes, he did.

Q. And with relation to this second conversa-

(Testimony of Gordon L. Files.)

tion that you had with him, did you make any memoranda or data relative to that second conversation?

A. I just made a couple of pencil lines on rough paper at the time. I did not dictate a lengthy memorandum, as I did with respect to the first one.

Q. At what date did you say you received this call?

A. The first one was October 9th. The second was October 12th.

Q. As soon as you got the note from him, you immediately called the attorney out at the Warner Bros. Studio, Mr. Obringer?

A. On October 9th?

Q. Yes. A. Yes, that's correct.

Q. And he informed you that he would talk to Mr. Evelove, who was the head of the publicity department; isn't that correct? A. Yes.

Mr. Dryden: I have no further questions.

Mr. Williams: I have no further questions.

The Court: That is all.

Mr. Williams: Oh, yes, I have, your Honor. There is one matter I neglected to ask him about.

### Redirect Examination

Q. (By Mr. Williams): With reference to Exhibit No. 8, was that returned to you? A. Yes.

Q. I noticed some notes in pencil at the bottom of Exhibit 8. Were those made by you?

A. They were. They are in my handwriting.

Q. Were they made at the date they bear?

(Testimony of Gordon L. Files.)

A. Yes, they were made immediately following my telephone conversation with Mr. Marcus on October 26th.

Mr. Williams: That is all. I have nothing further.

The Court: That is all.

(Witness excused.)

Mr. Williams: Mr. Lancaster, please.

### BURT LANCASTER

called as a witness by and on behalf of the defendants, having been previously duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Williams): Mr. Lancaster has already been sworn as a witness in this case. [141]

Mr. Lancaster, I direct your attention to the making of the picture, *The Flame and The Arrow*, and I want to ask you particularly as to certain sequences in the picture, and as to what, if anything, you personally did in reference to them.

In the matter of the order of the picture, as I recollect, the first place at which the character Dardo appears is at a time when Dardo, accompanied by Rudie, and having the body of a deer across the saddle, rides down into the village. Do you remember that sequence?

A. Yes, I do.

Q. And that was the opening sequence in the picture as far as you were concerned?



(Testimony of Burt Lancaster.)

A. Just about.

Q. Did you yourself portray the role of Dardo riding into town?      A. Yes, I did.

Q. And was the role of Rudie played by the little boy, Gordon Gebert?      A. Yes.

Q. For convenience I will just use the word or name Gordon from now on. He was a little boy eight or nine years old?      A. That is right.

Q. Now, the next sequence that I remember was the [142] sequence in which you drew a bow and arrow and fired it into the air—that is the character Dardo. Did you perform that action?

A. I performed the action of shooting the actual arrow, that is right.

Q. And the next thing I remember in sequence is the point at which you and the character Piccolo played by Nick Kravath were in the blacksmith shop or barn and at a particular time Nick Kravath chins himself up into the loft and thereafter he springs from the loft into your arms, you catch him and go into a back somersault?

A. That is correct.

Q. Now, what is the name of that particular action? What do you in acrobatic work call that?

A. Well, there is no particular name for the stunt. I think you have described it fairly accurately. He jumped from the loft into my arms into a straddle position across my shoulders and I sank with him on the catch and flipped him into a back somersault, all in one motion, what we call "in swing time" which means I didn't catch him,

(Testimony of Burt Lancaster.)

stop and then perform the trick. I caught him on the ground and threw him.

Q. And you yourself performed the portion of that that is shown as being performed by the character Dardo?

A. Yes. I remember I rehearsed that special little [143] trick for three weeks.

Q. Now, that particular matter is a piece of acrobatic work?      A. Yes, it is.

Q. And let me ask you this. Have you had any experience in acrobatic work?

A. A great deal of experience.

Q. What has been your experience in acrobatic work?

A. I started in acrobatic work on an amateur basis back in 1932 at New York University. In 1934 I worked in my first professional job in a circus, a circus called Kay Brothers. I remained in the circus field through 1938 and after that period I worked until 1941 as an acrobat in vaudeville, in what we call fairs, carnivals, night clubs, hotels, cafes, et cetera.

Q. Doing what type of acrobatic work?

A. Doing what is known as horizontal bar work and another kind of act known as perch pole act, a balancing perch pole act. The people in the courtroom will remember the picture showing an act where Nick Kravath balanced me at the top of the pole and the horizontal work just at the last of the picture was work done on horizontal bars.

(Testimony of Burt Lancaster.)

Q. In other words, you had been doing horizontal work and perch pole type of work since 1932 and since 1934 professionally? [144]

A. Yes. And in addition to that I engaged myself in other forms of aerobic work such as a bit of hand balancing and some tumbling and the kind of work that was employed in the Three High which was the shot in the picture where I held Nick Kravath and the bear on my shoulders and we did the forward roll.

Q. And that is a recognized type of acrobatics?

A. Any Three High—

Q. In 1941, up until about 1946, you were in the Army, were you?

A. September 1941 to 1945.

Q. And thereafter you did what?

A. Thereafter when I returned home from Italy I managed to quite accidentally get into a Broadway play and from the success of that play I was engaged for picture work and I came out to Hollywood and got into the picture business.

Q. And from 1946 to the present time you have been in picture work? A. That is right.

Q. And among the pictures you have made are The Flame and The Arrow and what other pictures involving the display of your acrobatic skill?

A. Specifically two pictures, one The Flame and The Arrow and another one done after that called the Crimson [145] Pirate.

Q. In both of those you display your skill as an acrobat? A. That is right.

(Testimony of Burt Lancaster.)

Q. Now, in the sequence of the picture, after we leave the sequence where Nick—by the way,—withdraw that.

By the way, Nick Kravath who appeared in the role of Piccolo in this picture is a man who has been your partner in circus and vaudeville work and acrobatic work through these years?

A. Nick Kravath and I did an act all through my professional years working as acrobats strictly.

Q. Now, the next sequence which I remember in which some work of an athletic character was done by you, is a sequence in which, after having the hawk come into the public square you yourself or the character Dardo, has some action following some words by the character Ulrich, who was portrayed as the villain of the play, Ulrich uses the language "Take the boy." And with that some action occurs.

Now, will you describe that action on the part of Dardo at that time?

A. Yes. Ulrich says "Take the boy" and the camera cuts to me looking worried and frightened. A soldier runs in to take the boy. I grab him by the shoulders and throw him into the crowd. I throw him over my head and over the [146] crowd to a friend on the other side of the crowd immediately following which I turned and Nick Kravath places himself in what we call a foot pitch position. I step into his hand. I will have to demonstrate this. He is in this position. I step into his hand, putting my foot into his hand and he

(Testimony of Burt Lancaster.)

throws me over his head, over the crowd and I land down in the crowd where the boy is waiting with one of the characters and I pick the boy up, throw him on my shoulder, run up a scaffold which is an incline of roughly 45 degrees and make a right-hand turn and continue on the same kind of incline up to a portion of the roof and around a chimney where I throw the boy and disappear after him.

Q. Now, was all of that action done by you personally?      A. Yes, it was.

A. A subsequent time there appears in the picture a shot of the character Dardo in the distance—against the skyline. He is escaping along the crest of the roof for a distance of over 20, 25 or 30 feet, apparently carrying the boy. Was that particular position where the character Dardo escapes along the crest of the roof, was that particular portion in the picture portrayed by you?

A. No, it was not.

Q. Did you yourself so far as your recollection goes, actually portray that scene or any part of it in either another take or in the rehearsals? [147]

A. Well, the only recollection that I honestly have of it is that at one particular point I made a jocular remark to—

Mr. Dryden: Just a minute. I don't like to interrupt the witness but I object to any remarks made outside of the presence of the plaintiff.

Mr. Williams: I think that is correct. That wasn't my question. I wanted to know what your

(Testimony of Burt Lancaster.)

recollection is, whether you did any part of that particular act where the character Dardo is escaping along the roof.

Mr. Dryden: That is objected to. I want to object to that on the ground it is immaterial unless it relates to the sequence actually shown to the public with relation to the character Dardo running across the top of this roof.

The Court: I think the witness testified he didn't do the running across the scaffold.

Mr. Williams: He testified he didn't do the portion which is portrayed in the picture. I am asking him whether he did the actual action himself.

Mr. Dryden: Now, that is my point, your Honor. In other words, the witness has testified that he didn't do the part going across the roof. Now as I understand the purported question of counsel is whether or not he had done that at some other time or on some other shot in the same sequence and not the one that was shown to the public. That is my [148] position, your Honor, and I maintain that would be immaterial to any issue in this case.

Mr. Williams: Not in view of the language—

The Court: Counsel, I don't know. I have been listening to this case with a great deal of interest. I can't see where a man running across a scaffold there, and while there may have been some trick photography, where he is running across the top of the roof is a stunt.

When we get down to the meaning of a "stunt"—

(Testimony of Burt Lancaster.)

Mr. Williams this morning wanted to use it in the language of the industry but I want to use it in, I think, the language of a layman. I think it has to be used in the language of a layman. There was no stunt in running across a scaffolding. That would not come within the classification of a stunt.

Your contention is that the part of going up the ladder with the boy over his shoulder was a stunt but this witness has said he did that and your witness this morning admitted that, that he received the boy and carried him up the ladder and then made it appear like he was running across the top of a roof.

Mr. Dryden: Yes, your Honor, and we maintain, of course, that running across the roof with a man over his shoulder as shown in this picture here, with arrows being shot at him as he is making his escape in the eyes of a layman is a stunt.

The Court: Well, this court isn't going to agree with [149] you, counsel.

Mr. Dryden: Now, with relation to the particular question——

The Court: Let us find out what he did and we will save the argument for afterwards.

Mr. Williams: I think there is a question which remains unanswered.

The Court: I think his answer is clear. As I understand this witness carried the boy up the ladder and this other man who testified this morning, took the boy and ran across the top of the roof, as he described it on a scaffolding which made

(Testimony of Burt Lancaster.)

it appear as though he was running on top of the roof.

Mr. Williams: That is correct.

The Court: That is correct, is it not?

The Witness: Yes.

Mr. Williams: My other question was whether he himself has any recollection as to whether he performed that particular action.

The Court: I think he testified he didn't.

The Witness: No.

Mr. Williams: I don't know.

The Witness: Well, conditionally I might add that when we first started this picture I wanted it to be made perfectly clear that I would be doing my own stunts. I was thinking [150] in this in terms of my career as an actor. It is characteristic when an actor takes that position a studio feels that, well, maybe he will and maybe he won't, so they are prepared to have stunt men standing by in the event he can't do this kind of thing.

Now in my opinion I felt that the situation of running across the roof did not really constitute a stunt which was why——

Mr. Dryden: Just a minute, please, Mr. Lancaster. I don't like to interrupt the witness but I submit that these answers are not responsive and they are full of opinions and conclusions.

The Court: I realize they are opinions. I have ruled with you generally on what he considered a stunt and what the public may consider a stunt. I think they are two different things. The news-



(Testimony of Burt Lancaster.)

reel refers to it and I think in the usual acceptance of the meaning of the word and not what is meant by the word in the profession.

I want to say now that I don't think walking across that scaffolding with a boy over his shoulder is a stunt. Now, I just want to make that clear.

Mr. Dryden: I am glad you did.

The Court: I don't want any mistake about that. I don't think anybody up there with a boy over his shoulder walking on a protected walk is a stunt. [151]

Mr. Dryden: Of course the portrayal is——

The Court: I realized the portrayal indicates this man is walking across a roof but we all recognize what we might call trick photography and we are not trying a case of trick photography here.

Mr. Dryden: That is true, your Honor, but nevertheless—will your Honor hear me out on this particular issue? Where you have a situation in which is portrayed a person and incidentally if you recall the picture it wasn't a person walking across a roof but a person running across the top of a peak roof.

The Court: But that was the trick photography.

Mr. Dryden: Insofar as the trick photography was concerned, it was only by reason of the platform down below, but there was no trick photography there.

The Court: Only the roof showed but they had a walk there for him to run on.

Mr. Dryden: Well, I mean from the standpoint

(Testimony of Burt Lancaster.)

of the vision to the layman that was a man running across the top of the roof.

The Court: I don't think there is any stunt about running.

Mr. Dryden: Well, of course, I am not going to argue that point further at this time.

The Court: I have tried to tell you not to argue now. [152] I will listen to your argument later and that is why I am giving you advance notice that as far as has been portrayed to me, if your case relies on that being a stunt you are out of luck.

Mr. Dryden: Well, of course there are several other sequences.

The Court: I realize that, but according to the testimony he ran up a ladder at a 45-degree angle to that roof. That might be in the classification of a stunt but this witness testified he did it and so did your witness. But after they reached the top and walked across a board walk, you might say, there isn't any more stunt to that than walking into this courtroom.

Mr. Dryden: I appreciate your Honor's informing me of your position. At the time of argument I will go into that.

The Court: I am trying to be frank with counsel and there is no use of getting into an argument with me now because if you do I will probably do most of the talking.

Mr. Williams: I will proceed to the next question.

(Testimony of Burt Lancaster.)

Q. (By Mr. Williams): The next sequence that I remember in the picture——

The Court: Let us take up one of the sequences that has been raised here and claimed not performed by this witness.

Q. (By Mr. Williams): Well, there is one other sequence [153] that I remember that has been discussed here in which the character Dardo is shown discharging an arrow in the direction of the air—up in the air and subsequently it appears that a falcon has been pierced by the arrow and drops down to the earth. Who was the character—who actually drew the bow and discharged the arrow which was discharged in that sequence?

A. I was.

Q. Yes. Now, with reference to the next scene which is discussed here, it has been particularly discussed by counsel for the plaintiff, the scene where the outlaws arrive to rescue Papa Pietro in the square. The outlaws arrived on horseback, carrying long limbs of trees which are in the form of spears, and the character Dardo is shown in that sequence in one close-up, and on a horse entering the square. Were you the character who was shot in that close-up?

A. In the specific close-up you have mentioned, I was the character, yes.

Q. And that is the only place in the picture where up until the final rescue of Pietro, the only place where the character Dardo appears specifically in that scene?

A. That is correct.

(Testimony of Burt Lancaster.)

Q. Now, at a later time in that same sequence, that is, in this same village square when the character Papa Pietro is rescued, Papa Pietro is standing on a platform of a low two-wheeled cart, he has a rope around his neck which is [154] attached to a scaffold, his hands are tied, he is in a position to be hanged, and at that point the character appears riding on a horse, brings the horse to a stop, and steps on to the platform and reaches up and cuts the rope, and then down on his knees seizes the reins and starts to drive the horse out of the court yard, and as he is driving the horse, the horse starts and goes into a trot, and he rises to his feet holding the reins on this cart. That particular sequence, was that performed by you?

A. No, it was not.

Q. It was not performed by you. Now, in your opinion, would that sequence constitute a stunt?

Mr. Dryden: That is objected to. It calls for an opinion, and would be the ultimate determinative issue in this case.

The Court: I want to say, Mr. Williams, I have felt that the meaning of that newsreel is the common meaning and acceptance of that word. Now, whether this witness thought it was a stunt or not, I don't think it would be binding on the public who saw that ad.

Mr. Williams: I appreciate the force of your Honor's position. I realize that, and yet I feel, inasmuch as it is a matter relating to the motion picture industry, and as to a motion picture, that

(Testimony of Burt Lancaster.)

it would be of assistance to the court and would show the court what the word "stunt" meant [155] in the motion picture industry. That is, I have given the matter a little thought, and without being at all too insistent, I want to make the record of the thing, because I think it may be of assistance to your Honor.

The Court: I don't think it will be of any assistance to me, so far as I am concerned. I am going to sustain the objection.

Mr. Williams: I want to make an offer in that connection, then, that this witness will testify that in his opinion in the motion picture industry the word "stunt," as used in the industry, does not apply to the particular actions which we have just discussed, that is, the action of the rescue of Papa Pietro.

The Court: The record so shows.

Mr. Williams: Now, I may be able to save some time, if your Honor prefers. I intended to go over these other acrobatic feats which were performed by Mr. Lancaster, and particularly in view of some of the allegations of the complaint, although there has been no proof on it. I would like, briefly, if I may, to cover them, without going into them too much, and I won't try to follow the exact sequence of the picture, because that may take a little too much time.

Q. (By Mr. Williams): For instance, let me ask you this: Did you execute the somersaults and pirouettes from horizontal bar to horizontal bar,

(Testimony of Burt Lancaster.)

six in all, swinging from each bar to [156] the other, upstanding on one foot, and on the last bar drop to a ledge or cornice?

A. Yes, I did.

Q. You performed that yourself, personally?

A. Yes, I would like to clarify it, briefly. It wasn't one leg, it was two legs. I didn't drop down to a ledge. I dropped down to what we call a tick, about sixteen feet underneath me. I completed the somersault and dropped to the tick.

Q. Now, isn't it a fact that you did the full action shown where you climb onto a pole, and climb up the pole which is held on the head of the character Piccolo, enacted by Nick Kravath and at that point you support yourself with your legs and stand with your arms out in the air, and then later throw yourself or pull yourself around until your feet are out in a horizontal position, forming what is known as a flat? A. Yes, I did that.

Q. And that is an action which you and Nick Kravath had done for years in your business, is that correct? A. That is true.

Q. Now, with reference to the point from where you swing from a drape high on the wall of the interior of the castle, and swing from that, and down, and drop onto the floor, did you yourself personally perform that? [157]

A. Yes.

Q. And did you personally perform the feat of climbing a rope from the ground and up to a window? A. Yes, I did.

(Testimony of Burt Lancaster.)

Q. Where you are going up for the purpose of going to help your boy?      A. Yes.

Q. And Kravath also did that?

A. Yes, sir.

Q. And is that a difficult feat?

A. Yes. We did it without the use of the legs, as we call it, hand over hand, strictly without the use of the legs.

Q. Now, with reference to the scenes where you and Nick Kravath fight your way out of the great hall, where you seize these flambeaux with the flaming torches and fight all of these soldiers that are seeking to prevent your escape, with a great deal of action on the floor, and leaving the floor, did you yourself perform all of that portion which is shown as having been performed by the character Dardo?      A. Yes, I did.

Q. And with reference to the point at which you and Kravath together get Kravath up on to the chandelier and start him swinging, the portion of that done by the character Dardo, was that done by you? [158]      A. Yes, it was.

Q. And with reference to the wall-scaling, which appears from time to time in the picture, where you jump and seize a wall and then work your way up on the thing, was that done by you?

A. Yes, it was.

Q. In the forest, when you and Kravath stopped the Lady Ann, to take the whip from her hand, and where your arm is in a sling, and with your arm in a sling you do a back somersault off a limb

(Testimony of Burt Lancaster.)

coming down onto the ground, did you personally do that? A. I certainly did.

Q. And because of the fact that your arm was in a sling, was that a difficult feat?

A. Yes, it was. It kept me from balancing myself in the air, in the event I did not do the somersault just right, it would make it difficult for me to adjust myself, because I was strapped in, so to speak.

Q. Now, with reference to the fighting that took place in the final scenes which led up to the victory over Ulrich, and you came out getting the girl—

The Court: You did come out getting the girl?

The Witness: I was contracted for it, sir.

Q. (By Mr. Williams): Now, Mr. Lancaster, there was a terrific melee and battle that takes place in the great hall [159] and in the corridors, and various places, on the tops of walls, in connection with that did you yourself do all of the part portrayed by Dardo in that action?

A. Yes, I did.

Q. Including the running up of the stairs, fighting your way up the stairs, throwing soldiers over your back off the stairs, and pushing them sideways, and doing all of the other action shown there,—you did all of that yourself?

A. Yes, I did.

Q. Incidentally, in connection with that particular sequence in which you were using the torches,



(Testimony of Burt Lancaster.)

you got so realistic you actually burned one of the men with the torch, didn't you?

A. That is true. Sailor Vincent, a stunt man.

Q. Now, to get down to the question of these three men high scene, that is the scene in which you are the ground man or bottom man, Nick Kravath, playing the part of Piccolo, is the next man, and on top is another acrobat who is dressed in a bear's costume, and as you stand in that position, all three of you at the same time lean forward and fall to the ground, and at the last instant each of you completes a roll on the ground and comes up standing. In that scene, you took the character Dardo, and enacted that particular feat, did you?

A. I was the understander. I held the other ones. [160]

Q. You were the understander. That is what I understood, too.

A. It is a funny art.

Q. Now, we come to the duel scene between you and the character Alessandro, which is played by Douglas, the actor Douglas, that duel scene in which you fight in the corridor and in which he is finally shown to be killed. Did you yourself do the entire action of that duel scene so far as the part Dardo is concerned?

A. Yes, I did, and it was photographed that way.

Q. And in connection with that, did Don Turner also help in the matter of the preparation of that scene, and in laying it out?

A. Yes, he did.

(Testimony of Burt Lancaster.)

Q. And doing the fencing?

A. Yes, he helped.

Q. There was no part of the actual fencing in that particular sequence that you did not yourself personally do, was there?

A. I did the entire sequence, yes, sir.

Q. Now, that sequence includes a point at which, after you have cut the lights down and the place is in the dark, or semi-dark, with enough light showing to show the character Alessandro, and he stumbles and lies on the floor there, and at a certain point the character Dardo is catapulted through [161] the air on to him, and seizes him, and it fades into the dark,—did you yourself do that particular action—

A. Yes, sir.

Q. —of falling on to him in that fight sequence?

A. I did, sir.

Q. Now, with reference to the sequence when you walked across the pole, first Nick Kravath playing the character Piccolo, and you afterwards walked across the pole which was stretched across the kitchen of the great castle, and you held the pole tight while Nick Kravath walked across the pole, and Nick Kravath held it while you walked across, and at a certain time you apparently lost your balance, and then caught yourself and swung yourself from the pole over to the wall, did you yourself do all of that particular action?

A. Yes, sir.

Q. And is that a part of the acrobatic work in which you have special training?

(Testimony of Burt Lancaster.)

A. Yes, it is.

Q. Now, with reference to the arrow, or the shooting of the arrow, in which it is shown that Ulrich is killed at the time when he is seeking to escape, carrying the little boy and attempting to protect himself from attack by using the little boy as a shield,—did you yourself perform the actual act of drawing the bow and discharging the arrow which is shown to be discharged in that scene?

A. Yes, I did.

Q. As a matter of fact, the arrow which actually struck the character Ulrich was not shot by anybody, was it?

A. No, it was done by the special effects department on a wire with an air gun.

Q. As a matter of fact, under the regulations of the motion picture industry, you are not permitted to shoot an arrow which is seen in the picture to strike a person? In other words, there has got to be a cut between the discharging of the arrow and the striking of a person, because it isn't permitted to show it in one sequence; is that correct?

A. I wouldn't know about the technique.

Mr. Dryden: I object to that as leading and suggestive.

Mr. Williams: The witness testified he didn't know, so I guess I will have to testify myself.

Mr. Dryden: That is what you were doing a fair job of when I objected.

Mr. Williams: I thought I was, too.

(Testimony of Burt Lancaster.)

Now, I think, if your Honor please, I have covered all of the sequences as to which there is any question in this case, and for the purpose of showing what actually was done in as much detail as I can.

The Court: You made a good witness, Mr. Williams.

Mr. Williams: Thank you. It is very seldom a lawyer does that, too. [163]

I have no further questions. Oh, just a moment.

The Court: Is that all?

Mr. Williams: That is all, your Honor.

The Court: We will take a five-minute recess at this time.

(A short recess.)

The Court: You may proceed, gentlemen.

### Cross Examination

Q. (By Mr. Dryden): Mr. Lancaster, directing your attention to this escape across the top of the roof, would you tell us approximately how high the top of that roof was from the ground?

A. I would say it was somewhere in the neighborhood of 20 to 25 feet.

Q. Am I right in my understanding that that side of the roof portrayed to the public looking at the picture would indicate that was the near side of a peak-pointed house; is that correct?

A. Yes, a peak-pointed roof, I think you could say.

Q. Now, on the far side where this platform

(Testimony of Burt Lancaster.)

was, there was a complete drop-off. In other words, the other half of the roof was not actually constructed, was it?

A. I don't know exactly. I don't remember.

Q. As a matter of fact, on one occasion you actually [164] played the sequence of carrying the boy and escaping over the top of the roof, as is shown by Don Turner in the final picture; isn't that right?

A. I am sorry. Your question confuses me.

Q. Did you in one sequence, which is not portrayed in this film, act the part of Dardo running across the top of the roof?

A. Of course, you are not referring to anything shown in the film?

Q. No, I am not. I am referring to what was done there in the sequence, but not shown to the public.

A. You mean, did I engage in a practice run, or did I do it in practice?

Q. Did you do it, where it was shot by the camera?

A. I don't remember that I did. I have no recollection that I did.

Q. Would it refresh your memory in that respect if the records of the studio showed, at least according to the admissions, that in one of the takes you performed the role of Dardo with Billie Curtis doubling for Rudie, and proceeded across this roof?

A. I don't remember that particular take.

(Testimony of Burt Lancaster.)

Q. Did you make any practice runs across that roof with Billie Curtis?

A. Well, I will have to answer that question qualifiedly. [165] At one point, as I started to say before in response to Mr. Williams, I remember picking Billie Curtis up and kidding him about getting a little fat, since he was a little stouter through the waist than the boy for whom he would be doubling in this sequence, and picking him up to my shoulders and running there, but I can't remember whether I did it on the ground or did it on the scaffold.

Q. Now, how wide was this scaffold?

A. I don't know, since I don't remember having been there. I don't know. I think it was two lengths of 2 by 12's. That is, it would be 24 inches in width, but I am not sure.

Q. And you say about 25 feet off the ground?

A. Something like that.

Q. And there were no barricades, at least that came up as high as the hip of any person running along there, were there?

A. You see, I don't remember anything about that, so I couldn't say.

Q. Now, let's take this sequence when they entered the court yard to free Papa Pietro. As I understand it, you say that the riding sequences showing you leading the band with your sapling spears, so to speak, that was performed by you?

A. The sections that show me in close shots in

(Testimony of Burt Lancaster.)

which [166] my face is recognizable, I did all those shots.

Q. Now, let's start from the time you leave the forest. A. Yes.

Q. Without reference to the close shots. What about the shots that showed Dardo, the character Dardo, were there any of those shots that were played by Don Turner, from the time you left the forest until you got to the court yard?

A. To my recollection, Don Turner didn't do any of those riding sequences.

Q. Did anyone else do those riding sequences in the role of Dardo?

A. I would like to ask you to be specific about that, because I know the film very well, and I can point out any sequence you mention, if you will mention the specific cut in the film.

Q. The cut I am referring to is when you find out that they are going to hang Papa Pietro, and you leave your camp and you ride to the place where you are about to enter the court yard.

A. Yes.

Q. Were there any persons who had the part of Dardo other than yourself in the ride from the camp to the point where you were going to enter the court yard?

A. In the shot where I leave the actual camp-fire sequence, I ride on the horse, and then I believe there is a [167] shot of a man riding in the distance toward the square. That is a long shot of

(Testimony of Burt Lancaster.)

another person riding the horse, and the impression is to believe that it is me doing that.

Q. In other words, that is the fast ride that was made to the rescue?

A. That's right. It wasn't to the rescue. It was merely to investigate the situation. He then returns, if you recall, and then takes the band with him.

Q. Thank you. As I understand it, in the first sequence you yourself rode the horse and went over to investigate the situation; is that true?

A. No, that isn't.

Q. Dardo did?

A. Dardo, of course, did all the riding, but if you will specify Burt Lancaster and someone else.

Q. Maybe I can clarify it this way: In that first sequence the character Dardo goes over to the square by himself to investigate the situation?

A. No, that is not true.

Q. What is it?

A. As I pointed out to you, I thought clearly, I first got on the horse and I rode out of the forest, or rode out of what appears to be a forest. That shot was staged on a stage at Warner Bros. Now, then we went out to a ranch, where we were in a real forest, and you see one or two, or I don't [168] know how many long shots, of a man riding at a distance, it is myself leaving the forest. In that scene the other man riding is someone other than Burt Lancaster.

Q. Riding through the forest?



(Testimony of Burt Lancaster.)

A. That's right.

Q. Now, in the next sequence where Dardo comes back and gets his group to come to the rescue, in that ride up to the place where you arrive at the square was there anybody there that wore the costume of Dardo other than yourself?

A. Only in the extreme long shots in which you either saw a single man or rather in this particular instance now only a group was there—another person portraying the so-called role of Dardo.

Q. That was when the group went to the rescue?

A. That is right.

Q. All right. Now, at the time—do you recall who it was that portrayed Dardo in that sequence?

A. No, I don't. It was not Don Turner.

Q. Now, at the time the sequence shows the band entering the courtyard with the sapling spears for lack of a better description.

A. They were called tree spears, if that will help you.

Q. Tree spears. And in that sequence and the character Dardo there is a picture of Don Turner portraying [169] Dardo, isn't that correct?

A. There is one specific shot of Don Turner, two to be exact, the one where the old man was hanging, as Mr. Williams elucidated before, in which you see the back of a character ride up, stop, step off onto a cart, cut the rope and now begin to ride out all in that one rather tight shot, and it was on the back of that character and then there is another shot immediately following, a larger shot of the

(Testimony of Burt Lancaster.)

square with action in the foregoing showing that same cart in the background. In other words, continuing the continuity of the cart's progress and showing it begin to ride out of a street and the picture fades out so those are the two cuts and only two cuts in that entire square sequence in which Don Turner is portraying the character Dardo.

Q. And then you state that it is not true that insofar as leading the group in and beginning the hand to hand encounter with tree spears, that Don Turner portrayed the character of Dardo?

A. Not to my knowledge. I don't say that is not so but not to my knowledge.

Q. Then from your standpoint at least, within your own knowledge, you are not aware of any sequence in which Don Turner portrayed the part of Dardo in the hand to hand encounter there as he entered the courtyard?

A. He definitely did not in the hand to hand encounter [170] for this reason. There is a shot upon the entrance of the outlaws into the square and a rather long shot and there is a closer shot somewhere in the action of the character of Dardo riding toward the camera and thrusting his spear at one of the soldier's faces. That character is myself. It is the only cut of me in that particular sequence.

In the action that ensues and follows many of the leading characters in the piece—that is the outlaws and so forth, and of course the soldiers are engaged in action, they are rather close shots and you see

(Testimony of Burt Lancaster.)

in all these shots, you see the various characters who really portrayed themselves in the picture doing it and not actual doubles.

In that particular sequence, in this particular action there is no recorded photographic presence of Dardo at all, so nobody could have done Dardo then because Dardo was simply not in the film. Is that clear?

Q. Yes.

A. Then Dardo reappears in the film when you have the shot of Papa Pietro at the cart, so that is the first time Dardo reappears—appears, rather, in the square after you have seen the initial shot of Dardo as portrayed by myself coming into the close shot.

Q. Now, let us take this dueling sequence. I believe Alessandro, at least in the dueling sequence, was Robert Douglas, is that right? [171]

A. That is right. Well, may I say this. Robert Douglas played the character of Alessandro. There were two if I might say so, two Alessandros.

Q. The one that dueled and the one that——

A. Well, Mr. Douglas did some of his own dueling also. He may have done all of it for all I know, actually know.

Q. Now, in that would you describe the sabres that were being used?

A. I don't know that they would be called sabres.

Q. Will you describe them?

(Testimony of Burt Lancaster.)

A. Well, they were swords. I don't know the technical name for them, heavy steel swords.

Q. Do you recall when that sequence was shot that Don Turner was likewise dressed as the character Dardo?

A. Well, yes. There were a couple of shots in the picture, shots which were shooting on Mr. Douglas in which Mr. Douglas as the character Alessandro or rather as the character Alessandro was actually being portrayed by Mr. Douglas and in the foreground of these shots the character known as Dardo was not being performed by myself but by Mr. Turner.

Q. That is what I was interested in—in those sequences, where you get or, at least, in two of those sequences of this duel that is occurring there, where you get a face on picture of Alessandro and you get a backward shot [172] or a shot from the back of the character.

A. Over the shoulder?

Q. Over the shoulder of Dardo when this duel is going on there were at least two of those sequences of that duel in which Don Turner was playing the part of Dardo, isn't that correct?

A. That is correct, yes.

Q. Now, are you familiar with the affidavit that was signed by the stunt man out there with relation to this picture?

A. I am familiar with it to the extent I know it was going to be signed, yes.

Q. And you have seen it?

(Testimony of Burt Lancaster.)

A. I have seen it vaguely in lobby displays.

Q. And you are aware of the fact that among the things listed in the lobby display and in the affidavit as being the acts performed by you, were the sword duel with Robert Douglas?

A. Yes, yes.

Q. And in the list of deeds for lack of a better description outlined in the lobby displays and in the affidavit, falling in the category of things performed exclusively by you is the sword duel with Douglas? A. Well, I can only say——

Mr. Williams: That is objected to as including the contents of a written document which counsel has, because I furnished it to him and if it is to be referred to and its contents involved I think the document should be in evidence.

Mr. Dryden: That is satisfactory, your Honor. We will offer it in evidence, a photostatic copy of plaintiff's exhibit next in order.

The Court: Received.

The Clerk: Exhibit 9.

(The document referred to, and marked Plaintiff's Exhibit 9, was received in evidence.)

[See page 387.]

Q. (By Mr. Dryden): Now, I believe you stated in addition to the affidavit you referred to, you saw lists in the lobbys of theatres in which this picture was being shown? A. Yes.

Q. And among those deeds listed as being performed exclusively by you was the duel with Robert Douglas, isn't that correct?

(Testimony of Burt Lancaster.)

Mr. Williams: Just a moment. That is objected to as being a misstatement of the language of the affidavit.

Mr. Dryden: This is cross examination, your Honor, with reference to the displays that he refers to, that he saw in the lobbys.

The Court: The objection is overruled. [174]

Q. (By Mr. Dryden): Do you have the question in mind?

A. Would you mind repeating the question?

Q. In these displays that you observed in the lobby with relation to this picture, among them was listed as the deeds performed exclusively by you as the sword fight with Robert Douglas, isn't that correct?

A. Yes, that is correct.

Mr. Dryden: I have no further questions.

Mr. Williams: I have no further questions.

The Court: That is all, Mr. Lancaster. Call your next witness.

Mr. Williams: Mr. Cavens.

### ALBERT F. CAVENS

called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Albert F. Cavens.

### Direct Examination

Q. (By Mr. Williams): What is your occupation, Mr. Cavens?

(Testimony of Albert F. Cavens.)

A. Fencing instructor and motion picture choreographer of fencing.

Q. How long have you been engaged in that occupation?

A. Actually engaged since my return, since 1937.

Q. And are you the son of Mr. Cavens who has long [175] been known as a fencing instructor in the motion picture business?

A. I am the son of Fred Cavens, fencing master.

Q. Did you do some work in preparation for and in the picture *The Flame and The Arrow*?

A. Yes.

Q. What work did you do in preparation for that picture?

A. Mr. Lancaster studied fencing with my father for six months prior to the picture and I did the fencing choreography in the picture, instructing Mr. Lancaster and Don Turner the complete routines of the sequence.

Q. Were you yourself present in the dueling sequence between Dardo and the character Alessandro?

A. I doubled the character Alessandro throughout the entire sequence with Mr. Lancaster.

Q. And who portrayed the part of Dardo?

A. Mr. Lancaster.

Q. Did he portray the part of Dardo throughout the entire fencing sequence?

A. Throughout the entire fencing sequence with me.

Q. Now, were there in addition to his portrayal

(Testimony of Albert F. Cavens.)

of that character and his fencing, were there other pictures taken, portions of action in which the character Dardo was portrayed by Don Turner? [176]

A. Well, let me explain that. After you do what is termed a master shot, and a master shot is a shot that is done with the principal, Mr. Lancaster as Dardo, and the double, following that there is a return shot made of the other character. In other words, Mr. Lancaster opposite Alessandro in this sequence, Mr. Lancaster did the entire thing with Robert Douglas. However, for over the shoulder shots or what we call establishing shots, over the shoulder shots where merely the arm is shown at that time I believe there were two times that they used Don Turner.

Q. Yes. Now, what type of swords were used?

A. That was the same swords we used in the picture called Robin Hood with Errol Flynn. It is called a broadsword, a duralumin blade.

Q. And in the actual preparation for this duel is the entire action laid out and rehearsed in advance?

A. Yes. If I may explain it. In my profession we always—a musician may write his music but he has to have an instrument to play it upon. In my case where Mr. Lancaster is occupied in practice I have to have someone to work the choreography of the duel out with. It isn't something you may just imagine and put on paper. You have to have someone actually work it with and in this case that is the reason why Don Turner was hired at that



(Testimony of Albert F. Cavens.)

time, to aid me in working out the choreography of this duel. [177]

Q. And then having worked that out you taught it to the principals?

A. I taught it to both principals, Mr. Lancaster and Mr. Douglas.

Q. And thereafter it was filmed as you have described it?

A. Well, a picture is worth 10,000 words and it was much easier for Mr. Lancaster to see Mr. Turner portraying his part at that time in rehearsal than it is to explain it and that was the reason for Don Turner following that. The entire sequence was done by Mr. Lancaster and myself.

Q. Now, are you what is called a stunt man in the picture business?

A. Well, if I may say so, the stunt men may not consider me a stunt man but in my line of work I consider myself a stunt man and my work is stunts.

Q. And you have specialized in that particular line?

A. I specialize in motion picture fencing and also in the art of teaching modern fencing.

Mr. Williams: No further questions.

#### Cross Examination

Q. (By Mr. Dryden): As I understand it, you classify these implements that were being used as broadswords, is that correct?

A. Broadswords. [178]

(Testimony of Albert F. Cavens.)

Q. I had the impression from watching the film that when those are passed swiftly through the air they give off a sound. Is that purely a sound effect or is that a fact when you are waving them back and forth?

A. All the sound effects in that picture were done by myself.

Q. Now, in that sequence, if I am correct, there were several sequences where it would appear that a sword was rapidly put through the air and you would hear a whish?

A. That is true. That is done merely on sound film and not on the motion picture film. Those are inserted.

Q. And you say in these sequences that you had, as I understand it, you playing the part of Alessandro in the entire duel. Is that correct?

A. Correct.

Q. And by the same token on other occasions there would be a shot taken from the back of Dardo showing you and the expression on your face as you were using your broadsword, is that correct?

A. Would you repeat that last part again?

Q. There are other sequences showing over Dardo's shoulder at Alessandro?

A. Yes.

Q. And that would show the expression and dueling that Alessandro was doing? [179]

A. Yes.

Q. And you do recall that in at least two of those shots, that were back shots of the character Dardo facing Alessandro, that Don Turner was the

(Testimony of Albert F. Cavens.)

one that was actually wielding the weapon at that time?

A. Well, as I explained before those are not important shots.

Q. Just a minute. I move to strike the answer.

The Court: Answer the question.

The Witness: Yes.

Mr. Dryden: I have no further questions.

Mr. Williams: May this witness be excused?

The Court: Yes. Call your next witness.

Mr. Williams: Billie Curtis.

### BILLIE CURTIS

called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Billie Curtis.

### Direct Examination

Q. (By Mr. Williams): Your name is Billie Curtis? A. Yes, sir.

Q. And you are the person who portrays the part of small boys in motion pictures? [180]

A. That is right.

Q. And you are a midget?

A. Well, you can't—I don't think I am.

Q. What do they call you?

A. No, I am not in the midget class.

Q. What do they call you?

A. Just a little man. There is a difference.

Q. And you are at any rate over 21 years old?

(Testimony of Billie Curtis.)

A. Yes, sir.

Q. How tall are you, Billie?

A. I would say close to four feet two inches. That would be 50 inches.

Q. In the picture *The Flame and The Arrow* you portrayed in one or two sequences the character Rudie? A. That is right.

Q. And do you remember the sequence in which the character Dardo carries the character Rudie along the crest of a roof for a distance of 25 feet or so. Do you remember that sequence?

A. Yes, I do.

Q. And in that particular sequence do you portray the character Rudie? A. Yes, I did.

Q. Now, in the sequence which preceded that, in which the little boy Rudie was carried from the ground up to the [181] crest of the roof, do you portray that character?

A. At one time I went in there to try the stunt for the sake of the boy. In other words, you are referring to where he is shown in the crowd?

Q. Yes.

A. Mr. Lancaster drapes him over his shoulder and climbs up an incline and up to the roof, which is the actual roof and hides him behind the chimney.

Q. Yes.

A. I still did that with Mr. Burt Lancaster to try the stunt for the boy but they found I was too fat so they had the boy do it again.

Q. Now, when you came to doing that portion

(Testimony of Billie Curtis.)

of the picture where you were carried across the crest of the roof for this 25 feet or so, who carried you?

A. At that time I was being carried by Don Turner.

Q. That is in the picture? A. Yes.

Q. Did Burt Lancaster himself carry you along in that sequence?

A. At one time Burt Lancaster went along without the arrows being shot to see the safety of that for Don Turner. He doesn't remember it but I do recall that.

Q. He carried you, did he?

A. Yes, because it led—he went down the roof to [182] show me how to go from one roof to the other, to make it an easy climb and——

Q. Well, you yourself then at a later point in the picture did go along?

A. Both roofs.

Q. The crest of the roof and the down slope of the roof?

A. I went from one slope up to the other.

Q. Portraying the part of Rudie?

A. Yes, sir.

Q. So that actually in this picture, in this sequence in which the character Dardo and the character Rudie were escaping along the crest of the roof you were carried twice, once by Turner and once by Lancaster? A. That is right.

Mr. Williams: That is all.

(Testimony of Billie Curtis.)

Cross Examination

Q. (By Mr. Dryden): Mr. Curtis, you say in the sequence running along the top of the roof at the time at which Mr. Lancaster carried you, that was for checking with relation to the safety of the arrows that were being shot?

A. No, not the arrows. The arrows weren't being shot. That was done without arrows.

Q. That was done without arrows? [183]

A. Yes.

Q. Then in the actual sequence that you performed with Don Turner as he was carrying you across the roof arrows were being shot?

A. Arrows were being shot ahead of us with no danger to the players.

Q. Ahead of you to give the appearance of——

A. That they were being shot into the air, yes, because the angle of the camera would catch the arrows and would give the impression that they were close to the persons that they were being shot at.

The Court: You weren't scared of being shot then?

The Witness: No, sir, at no time. I wouldn't have done it if I had, believe me.

Q. (By Mr. Dryden): Incidentally, with relation to that sequence of running across the roof, did you receive stunt pay for that sequence?

A. Are you talking about when I ran across the roof by myself or with Mr. Turner?

Q. With Mr. Turner.

(Testimony of Billie Curtis.)

A. Mr. Turner and I ran across—I don't have any stunt pay whatsoever in a picture. I would like to make that clear. If I do a boy and I walk along the sidewalk and trip, if I can get \$500 I will take \$500 but if I get only \$50 I will be satisfied with \$50. You can't classify me as a [184] stunt man for the simple reason that I am the only one to double for kids and the money I can make from the studios I get not as a stunt man. There are no stunts as far as I am concerned. I have to take my life in my own hands. If I trip or fall that is all there is to it. I am just a little man.

Q. That sequence after you crossed the roof when you ran down, apparently down to give the soldiers the idea, I believe, that Dardo was leaving you or you were trying to catch up with him, Dardo was shot and that sequence——

A. I consider that a stunt and if I could have got \$1,000,000 I would have but it was just my fortune I didn't get it.

Q. You were there running then on that same roof where you ran down one side?

A. I ran down one slope and up the other slope, yes, sir.

Q. And was that the slope that was immediately adjoining the area where Turner had carried you?

A. Yes, sir. It lead to the other roof. That is not the same roof that we walked along, no.

Q. But it was immediately adjoining?

A. An adjoining roof, right, and we walked along there.

(Tesimony of Billie Curtis.)

Q. That was a platform, as I understand it, on the far side? [185]

A. It was a platform, I would say safe enough for well, let's say an elephant to walk that, that is the width, and every precaution was taken. On the other side we had a scaffold to protect us.

Q. Now, were you being carried over his back at that time? A. Yes, sir.

Q. Am I correct in my understanding, Mr. Curtis, in so far as the back side of the scaffold is concerned, below the scaffold was a straight drop to the ground?

A. It wasn't straight, no. The roof was—well, the back of it was the backing, yes.

Q. And what distance would you say the scaffold was from the ground?

Mr. Williams: Which scaffold are you talking about?

The Witness: Which scaffold are you talking about? The one to protect us?

Q. (By Mr. Dryden): The one that was—

A. The one to protect us was just low enough that it was out of the film, that the camera couldn't pick it up.

Q. How high was that?

A. Anywhere from 2½ to 3 feet.

Q. From the ground itself?

A. No, from the top of the roof.

Q. I want to know from the ground, how high up? [186]

A. That I couldn't tell you. There were cross



(Testimony of Billie Curtis.)

pieces there, coming up supporting the scaffold, so I wouldn't know.

Mr. Dryden: I have no further questions, your Honor.

Mr. Williams: No further questions.

The Court: That is all.

(Witness excused.)

Mr. Williams: Mr. Thompson.

### GLENN THOMPSON

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

The Clerk: Will you please state your name?

The Witness: Glenn Thompson.

Q. (By Mr. Williams): Your name is Glenn Thompson?      A. Yes, sir.

Q. What is your occupation, Mr. Thompson?

A. Stunt man.

Q. In the motion picture business?

A. Yes, sir.

Q. How long have you been in that business?

A. Since 1937.

Q. 1937. What character of stunts do you perform? [187]      A. Just about everything.

Q. For the purpose of the court's information, will you give us first a brief statement as to the class of things you do.

(Testimony of Glenn Thompson.)

A. Oh, fights, drags, falls, car skids, wrecks, things on that order.

The Court: Speak up a little louder, please.

The Witness: Fights, wrecks, falls, transfers. That takes care of the majority of them.

Q. (By Mr. Williams): Now, directing your attention to the character of stunt that involves the transfer from one running to another running horse?

A. Well, that is called a bulldog.

Q. That is called a bulldog? A. Yes, sir.

Q. Do you do that character of stunt?

A. Yes, sir.

Q. Now, in riding, just straight riding over ordinary terrain, such as through a forest, or something like that, is that type of riding done by a stunt man, or is it done by extras?

Mr. Dryden: That is objected to on the ground it is immaterial, your Honor.

The Court: Do you contend that everybody that rides a horse is a stunt man, counsel? [188]

Mr. Dryden: No, but I contend it does not make any difference whether that work is generally done by a stunt man or not done by a stunt man. There are certainly some horse-riding activities that would constitute a stunt, and many others wouldn't.

The Court: Counsel, are you attempting to prove by this witness that the riding of a horse is not a stunt?

Mr. Williams: The riding of a horse through a

(Testimony of Glenn Thompson.)

forest at a fairly fast clip, with nothing else to it, is not a stunt in the motion picture business.

The Court: Well, this court has had experience before the days of automobiles.

Mr. Williams: If your Honor had about the same experience I had when I used to spend my summers on my grandfather's farm, I did a lot of riding that might have been called a stunt, but I never got any stunt money, and they never called me a stunt man.

The Court: They probably called you something else.

Mr. Williams: I am sure of that. That is the point I was trying to make with this witness, your Honor, as to whether straight riding either through a forest or over other terrain was considered stunt work. That is the question to which there is an objection.

The Court: I think what he calls it is not material, if there is an objection to it. [189]

Q. (By Mr. Williams): I will ask you whether in the motion picture industry the riding of horses through forests, and straight riding which does not involve falls, or the falling of the horse, or transferring from one horse to another, is classified as stunt work.

Mr. Dryden: To which we object, that it calls for a conclusion and opinion relative to the ultimate issues of the case.

The Court: Are you being paid in the riding of horses as a stunt man?

The Witness: I am always paid as a stunt man.

(Testimony of Glenn Thompson.)

The Court: You are always paid as a stunt man?

The Witness: I am always paid as a stunt man.

Mr. Williams: As a matter of fact, the riding of the horses was done by extras, not by a stunt man at all.

Mr. Dryden: Your Honor, I object to counsel continuing to testify in this case.

The Court: He had a lot of experience, counsel.

Mr. Dryden: I appreciate that. I move to strike the statement of Mr. Williams on the ground it is not testimony, and not part of the question.

The Court: That is not in issue. I don't care about it one way or the other.

Mr. Williams: I will consent it be stricken.

The Court: What was that? [190]

Mr. Williams: I will consent that may be stricken, if there is any objection by counsel. I am sure your Honor does not regard it as testimony.

The Court: I am not bothered by your testimony any, I will tell you that.

Mr. Williams: Now, may we have a ruling on the particular question?

The Court: I think the objection is good. Sustained.

Mr. Williams: I will offer to prove by this witness that in the motion picture industry the riding of a horse, either at a slow or fast gait, or over ploughed or rolling terrain, through hills or through mountains or through forests, when unaccompanied by falls, or bulldogging, or transferring from one

(Testimony of Glenn Thompson.)

horse to another, or by falling the horse, is not considered in the industry as a stunt.

The Court: You mean simply the riding of a horse?

Mr. Williams: Yes.

The Court: At a fast gait?

Mr. Williams: At a fast gait, yes.

The Court: I don't think it is what they call it in the moving picture industry. I think it is how the public would look at the word "stunt," and the other ruling still applies to this, counsel.

Mr. Williams: I just wanted to make the offer, your Honor. [191]

Q. (By Mr. Williams): Now, with reference to the picture, *The Flame and The Arrow*, did you work in that picture? A. Yes, sir.

Q. What work did you do?

A. I worked as a stunt man.

Q. What particular type of work?

A. I was mostly getting killed in the picture.

Q. In other words, you took a part in the fights, and falls; is that correct? A. Yes, sir.

Q. Did you portray the part of a soldier or an outlaw? A. Just a bit of everything.

Q. You were a soldier, and then when you got killed, out of that you got up and became an outlaw?

A. Yes, I turned around and killed myself.

Q. All right, sir. Did you see the filming of that portion of the picture where the character Dardo, portrayed by Don Turner, and the character Rudie,

(Testimony of Glenn Thompson.)

portrayed by Billie Curtis, went across the crest of a roof which stand, oh, 25 to 30 feet up?

A. Yes.

Q. While arrows were being shot?

A. Yes, I did.

Q. Do you have an opinion as to whether that particular [192] sequence that I have just described constitutes a stunt, as a stunt is known in the motion picture business?

Mr. Dryden: To which I object.

The Court: The objection is good on that and you can make your offer of proof.

Mr. Williams: I offer to prove by this witness, if your Honor please, that in the motion picture industry the action which I have just described is not classified as a stunt. It is classified as a photographic double.

Oh, one other question. May it be deemed that I have asked the same questions and made the same offer of proof with this witness with reference to the sequence where the character Dardo on a horse rides up and transfers to the standing cart at the time of the rescue of Papa Pietro? May it be stipulated I have asked the same questions and made the same offer of proof with reference to that?

Mr. Dryden: I have no objection. It is so stipulated.

Mr. Wililams: That is all, then, so far as I am concerned.

(Testimony of Glenn Thompson.)

Cross Examination

Q. (By Mr. Dryden): Mr. Thompson, on any of your riding sequences in this picture, did you portray or double for the character Dardo?

A. I didn't do any riding in the picture. [193]

Q. You didn't do any riding at all in this particular picture? A. No, I didn't.

Q. Were you present at the time when the shots were taken with relation to a group coming through the forest to rescue Papa Pietro?

A. No, I wasn't.

Q. Were you present in the courtroom at the time that the fight occurred with relation to Papa Pietro? A. Yes, I was.

Q. In that particular sequence, did you play the part of a soldier or the band that was coming to rescue Pietro?

A. I played the part of a soldier.

Q. Do you recall in that sequence who it was that you observed, as between Don Turner and Burt Lancaster, when they entered the yard there to rescue Papa Pietro?

A. I don't think there was either Burt Lancaster or Don Turner on a horse at the time.

Q. Do you recall the sequence when the character Dardo came into the court yard on horseback?

A. Yes, I recall that. Burt did that.

Q. Do you recall any of those sequences in there where Don Turner, prior to the rescue of Papa Pietro, was on horseback dressed as Dardo?

A. Only when he rode up to the gate. [194]

(Testimony of Glenn Thompson.)

Q. When he was dressed in Dardo's outfit; is that correct? A. Yes.

Q. Now, did you engage in any fighting with Dardo at all in that sequence in the square?

A. No, I didn't.

Q. Incidentally, did you see the dueling sequence of Alessandro and Dardo?

A. Partly. Mostly, I was sleeping during that.

Q. You saw a part of it? A. Yes.

Q. In those parts that you saw, did you observe the sequence wherein Don Turner was dressed as Dardo in a duel with Alessandro?

A. No, I didn't.

Q. Now, on those occasions when you have been riding horses, and you ride a horse through what purports to be a forest at what would appear to be a fast clip, do you receive stunt pay for that?

A. I don't get hired for that.

Q. You don't get hired for that type of work?

A. No, I don't.

Mr. Dryden: I believe that is all the questions I have.

Mr. Williams: Nothing further.

The Court: That is all. [195]

(Witness excused.)

The Court: Call your next witness.

Mr. Williams: Mr. Newhouse.



RAYNSFORD K. NEWHOUSE

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you please state your name?

The Witness: Raynsford W. Newhouse.

The Court: It seems you have a low voice, and you are going to have to speak up.

The Witness: All right, sir.

Q. (By Mr. Williams): Mr. Newhouse, you try to talk loud enough so that I can hear you, and then everybody else will be able to. What is your occupation?      A. Carpenter foreman.

Q. By whom are you employed?

A. Warner Bros.

Q. How long have you been employed by Warner Bros. as a carpenter foreman?

A. Since December of 1946.

Q. And you work out at the Warner Bros. Studios at [196] Burbank?      A. Yes, sir.

Q. Among the duties of carpenter-foreman, do you have the job of laying out or directing the erection of sets, and scaffolding, and such as that?

A. Yes, sir.

Q. Did you have anything to do with laying out and directing the erection of the set, or portions of the sets that were used in the picture, *The Flame and The Arrow*?      A. Yes, sir.

Q. Now, do you have in mind the portion of the set there which shows the court yard, and a

(Testimony of Raynsford W. Newhouse.)

long sloping roof, and then it is cut off, and in back of that set of that sloping roof, there is nothing that is shown so far as the picture is concerned? Do you have that in mind?

A. You mean there is nothing that shows on the film?

Q. Nothing that shows on the film?

A. Yes, sir.

Q. Do you know what that is—what is that called? A. Dijon Street.

Q. And at the time of the filming of the picture, *The Flame and The Arrow*, was there a runway erected at the back side of the crest of this roof on Dijon Street? A. Yes, sir.

Q. And did you have charge of designing and the [197] erection of that runway?

A. I had charge of the building of it, yes, the erection of it.

Q. And will you describe the setup there as to the width and character of construction of the runway?

A. Well, at the top—at the ridge of the roof we built a scaffold or platform two feet wide, running the full length. That platform was three foot eight inches to three foot or three foot nine inches or something like that, right close to that measurement from another platform which was five foot wide right below it.

The Court: How far below it?

The Witness: Three foot eight below the two foot scaffold. That scaffold was three foot wider

(Testimony of Raynsford W. Newhouse.)

than the one above and that one had a hand rail 42 inches high.

Q. (By Mr. Williams): The hand rail stood 42 inches from the floor of the wider scaffold?

A. Yes.

Q. And what was below that?

A. About six feet below that was the top of the arch. This roof that they shot at, as you remember, had an arch below it. The street went under it. That arch was 16 feet deep and was also housed in over the top so that was another six feet lower and was at least four to five feet wider than the five foot scaffold. In other words, projected back that [198] far.

Q. Was that a flat platform?

A. Yes, sir.

Q. Now, do you have a drawing that you made of this particular construction there?

A. I have.

The Court: I don't think there is any dispute as to the construction behind the peak of this roof.

Mr. Williams: I did not hear your Honor's statement.

The Court: I don't think there has been any substantial dispute as to the runway beyond the peak of the roof. I think all witnesses so far have testified to it.

Mr. Dryden: Of course we have no way of knowing, so far as I am concerned. I would appreciate it if we could see that, your Honor, if you will bear with us.

(Testimony of Raynsford W. Newhouse.)

The Witness: I also have a regular blueprint of it here, of the buildings down there.

Mr. Williams: Counsel has stated to me he has no objection to this being offered in evidence. May I ask the witness one or two questions about it, your Honor?

The Court: Yes.

Q. (By Mr. Williams): This is a drawing which you prepared yourself?

A. I prepared it myself, yes, sir.

Q. May I write the word "bottom" at the bottom of [199] it so we know which way it stands?

A. Yes, sir.

Q. Now, this shows on the right-hand side a line which has been marked with a little shading. What does that represent?

A. That represents the roof.

Q. That represents the slope of the roof looking toward the camera?

A. Right.

Q. And back of that it shows a platform two feet in width and then it shows another platform five feet in width and it shows a distance of three feet six inches up to a rail as shown there?

A. Yes.

Q. And then below that it shows the top of the roof as being four feet wider than the five foot platform?

A. That is right.

Q. And this is all accurate as to dimensions?

A. It is as accurate as I can remember.

Mr. Williams: We offer this in evidence, if your Honor please.

(Testimony of Raynsford W. Newhouse.)

The Court: It will be admitted next in order.

The Clerk: Defendants' Exhibit A.

(The document referred to, and marked Defendants' Exhibit A, was received in evidence.)

[See page 390.]

Q. (By Mr. Williams): Now, that second platform, the one that had the rail on it, was that put up especially for this picture or was that a platform that was used for other purposes?

A. We had that for other purposes originally. Originally that was for another purpose. It was revamped from another picture and we used that as a protection to go up the four extra feet.

Q. And what was that second platform, the five-foot platform, normally used for?

A. It was used for lighting the set, the electricians, grips—anyone to get around on the back of the set.

Mr. Williams: That is all I have. No further questions.

#### Cross Examination

Q. (By Mr. Dryden): Now, as I gather from your testimony you had this platform right below the crest of the roof. You built a platform there for a person to be able to pass over it, is that correct?

A. Yes, sir.

Q. And that was for the purposes of a safety precaution insofar as their ability to negotiate that area was concerned, isn't that correct?

A. It was put there to walk on.

Q. And from the standpoint of the fact that

(Testimony of Raynsford W. Newhouse.)

it would [201] be much easier to walk on that than it would be a situation where you had a peak roof, where somebody was going, isn't that correct?

A. Well, we didn't have a peak roof. All we had was a ridge.

Q. Now, this second platform you refer to, that is down about three feet below that and about five foot wide. You said it was used for other purposes, but likewise in this case it was used for a safety precaution, isn't that correct?

A. It was, yes.

Q. And then you say there was still another platform down below that, is that correct?

A. Down below that was the arch that went underneath that that was housed over as a platform below the five-foot platform, yes.

Q. And was it the purpose of that likewise an additional safety factor?

A. Well, you mean—I am not here to say whether it is a safety factor or not.

Q. Was it put there for the purpose of——

A. It was already there.

Q. Was there anything done with relation to changing its structure in any manner by reason of the fact that the upper part of the house was being used?      A. No, sir. [202]

Mr. Dryden: That is all.

Mr. Williams: No further questions.

The Court: Call your next witness.

Mr. Williams: May this witness be excused, your Honor?

The Court: Yes.

Mr. Dryden: No objections.

Mr. Williams: Mr. Greenlaw.

CHARLES F. GREENLAW

called as a witness by the defendants, being first sworn, was examined and testified as follows:

Mr. Williams: Your Honor, one of the witnesses asked me, one who has already testified, if it is all right for them to be excused.

The Court: Any witness who has testified unless directed by the Court to do otherwise, may leave the courtroom.

The Clerk: Will you state your full name?

The Witness: Charles F. Greenlaw.

Direct Examination

Q. (By Mr. Williams): Mr. Greenlaw, what is your occupation?

A. I am assistant production manager at Warner Bros.

Q. And how long have you had that position?

A. For about 10 years.

Q. Prior to that you worked where? [203]

A. At Warner Bros. in the production department.

Q. In other words, you worked yourself up to assistant production manager?

A. Yes, you can say that.

Q. What is the function of the production department at Warner Bros.?

A. The production department in a motion picture studio is responsible for preparing and budg-

(Testimony of Charles F. Greenlaw.)

eting pictures and then for supplying and controlling all of the physical requirements for the making of those pictures.

Q. And you as assistant manager of the production department, you are in charge under your immediate chief, of all of the work in that department?      A. That is true.

Q. Now, you have in mind the making of the picture *The Flame and The Arrow*?

A. I do.

Q. Which was filmed?      A. I do.

Q. Did the production department of Warner Bros. supervise the making of *The Flame and The Arrow*?

A. Yes, to a great extent. That picture was a Norma Production and they had their own production man assigned to the picture. However, our production department co-operated with them and to a great extent controlled and [204] mainly assisted in supplying all the physical requirements that they needed for making the picture.

Q. Now in connection with the matter of the making of that picture, was it made by one unit or two units?

A. It was made mainly by one unit but there were days on which a second unit photographed parts of the picture.

Q. And do you remember the character of the work done by the second unit in that picture?

A. Yes, I do.

Q. What was it?



(Testimony of Charles F. Greenlaw.)

A. On one occasion a second unit went out to a location and photographed a band of riders riding through the forest, presumably in the direction of the town.

And there was one other occasion, I believe—yes, it was the melee in the square of the town. That was photographed on the second day by a second unit.

Q. Now, did that second unit consist of any of the principals in the picture?

A. No. As I recall none of the principals were present on either day.

Q. And were any stunt men included in that group making up the second unit?

A. Yes, on one occasion.

Q. When was that?

A. In the general fight in the square of the town [205] stunt men were used.

Q. Now, in the sequence where they were used riding into town were stunt men used in that sequence?

A. No. I believe all of those partaking in that sequence were riders who come under a different classification. They were not stunt men.

Q. In the motion picture industry do the stunt men come under the jurisdiction of the Screen Actors Guild? A. That is correct.

Q. And the riders come under the jurisdiction of the Screen Extras Guild?

A. That is correct.

Q. And it was the men from the Screen Extras

(Testimony of Charles F. Greenlaw.)

Guild that were doing the riding that you described was done by the second unit?       A. Yes.

Mr. Williams: May I have just a minute, if it please the court. I have no further questions.

Mr. Dryden: No questions.

The Court: That is all.

Mr. Williams: If your Honor please, the only other witness that I have that I will produce in court is a witness who is flying here from New York. He is supposed to arrive late this afternoon. I telegraphed him as soon as I found out the case would be shorter than we anticipated and he should [206] be here before 10:00 o'clock in the morning.

The Court: What do you expect to prove by that witness?

Mr. Williams: I expect to prove by that witness—he is a man from the Warner News, Inc. I expect to prove by him that the script which was sent from Hollywood for use in the newsreel was changed and cut—the language was cut and changed under his direction at the newsreel office without consulting or getting any authorization from Warner Bros. Pictures, Inc. That is what I expect to prove by him.

The Court: Are you in position to dispute that, counsel?

Mr. Dryden: Well, I certainly wouldn't want to stipulate to that without cross examining the man, your Honor. I don't know what your Honor's thinking is along that line but if this witness—in

other words, I am not in position to stipulate that that is the fact.

The Court: You could stipulate that he would testify to that. That wouldn't be stipulating to the facts. You can stipulate if he were present he would so testify.

Mr. Dryden: Yes, on the basis of the presentation.

The Court: Warner Bros. themselves have so testified that as far as they were concerned they were not consulted and they are the main representatives of the company.

There can't be much dispute about the fact that the publicity was issued and supervised by employees of the different Warner organizations in their regular course of their [207] business.

Mr. Dryden: That is right.

The Court: If there had been a little more cooperation on a pretrial I think we could have eliminated a good deal of expense in this case—a man coming all the way from New York to testify to that and you are not in position to dispute it. It was probably like thousands of other pieces of literature or publicity that they talk about going through the mill. It has been turned out without any specific authorization or resolution by the board of directors and so forth.

Mr. Dryden: Yes, your Honor. I hope your Honor doesn't have the feeling that at least intentionally we have put anybody to any additional expense with relation to this case.

The Court: The only thing is, counsel, I haven't

had any co-operation in getting this case together. Mr. Williams has taken the attitude of standing pat and "You fellows prove it," which he had a right to do, but his client is being put to this expense. The man is on his way here. That should have been stipulated to, that he would testify to that or his deposition should have been taken.

But if he is going to be here in the morning we might as well hear him. We can give him a run for his money at least.

Mr. Williams: He would be terribly disappointed if he [208] didn't have the opportunity to appear here, I suppose.

There is one other matter I want to take up with counsel. I have a witness who, unfortunately, I am not—I don't feel justified in calling into court for the reason that her entire future in the motion picture industry might become involved.

She is the woman who acted as the script clerk on this picture. The script clerk is usually a woman who keeps minute track of everything that goes on in the making of a picture. She is prepared to testify but unfortunately I don't want to call her in and away from her job, because she is doing a job for a company that she hasn't worked for before and the whole company is working and if she were called away it would cost thousands of dollars and for that reason I was going to ask counsel if they would do one of two things, either if they are willing to stipulate what she would testify, as I will say she will, or whether they would

agree to meet with me this evening and take her deposition in my office.

Mr. Dryden: We can work that out, your Honor. We can work that out in the absence of the court here and either get a stipulation or take her deposition tonight.

Mr. Williams: She will be available to have her deposition taken tonight and with that, as far as I know at the present time, so far as I anticipate, those will be the [209] witnesses we will offer.

The Court: Are you going to have some rebuttal?

Mr. Dryden: The only possible rebuttal that we would have would be on the basis of a re-examination. It wouldn't be over 10 minutes at the most and I seriously doubt if we have that.

The Court: We will take a recess until 10:00 o'clock tomorrow.

(Whereupon, at 4:10 p.m. a recess was had until 10:00 a.m. Thursday, July 23, 1953.) [210]

Thursday, July 23, 1953, 10:00 a.m.

The Court: Proceed.

Mr. Williams: If your Honor please, in accordance with the suggestion which was made yesterday evening, counsel has agreed with me as to a stipulation with respect to the testimony of a witness named Metta Rebner. May I read the stipulation into the record?

The Court: Yes.

Mr. Williams: It is stipulated that Metta Rebner, if called and sworn as a witness, will testify that she is and for many years has been a script

clerk working in the production of motion pictures. That the duty of a script clerk is, among other things, to observe and make note of all action and details of action in the course of the production of a motion picture. That she worked as script clerk during the production of the motion picture *The Flame and The Arrow* during October, November and December of 1949. That she was present and observed the rehearsals, enactment, and photographing of the scene in which the character Dardo after having carried the character Rudie from the ground to the roof of the building, is shown in a distant shot against the skyline fleeing along the crest of the roof with Rudie over his shoulder while arrows were being shot at him. That this scene as enacted in the film was played by Don Turner [212] in the character of Dardo and the midget Billie Curtis as the character Rudie. That prior to the actual photographing of said sequence, it was rehearsed and enacted by Burt Lancaster in the character of Dardo carrying Billie Curtis in the character of Rudie. That subsequent to such rehearsal and during the absence of Burt Lancaster from the set, the actual photographing of the scene with Don Turner was done.

That the witness is now employed by an independent motion picture company and is engaged in working as script clerk on a motion picture which is now in production.

I understand that counsel agrees to that.

Mr. Dryden: Yes, so stipulated.

Mr. Williams: If your Honor please, the wit-

ness who was supposed to arrive from New York sometime through the night hasn't shown up yet. I presume he is en route by air some place.

The instructions I gave were that he was to be here in time to be in court at 10:00 o'clock this morning. He hasn't shown up and I am not in position to ask counsel as to what his testimony will be because it isn't certainly their fault that I haven't him here this morning.

Under the circumstances if he does show up before we conclude might I have permission to reopen for the purpose of taking his testimony; if he doesn't show up I won't delay the court by asking for a continuance. [213]

The Court: All right. You rest then with that reservation?

Mr. Williams: Yes.

Mr. Dryden: If the court please, at this time I would like to read into the record a few of the answers to the interrogatories, which, as I understand, is a procedure which must be followed in order to have it in evidence as such.

Mr. Williams: I have mine here, if you will give me just a minute. This is the answers to the interrogatories?

Mr. Dryden: Yes.

Mr. Williams: I have the answers to the interrogatories.

Mr. Dryden: All right. "Interrogatory No. 3:

"What is the name and address of the actor who appeared in the motion picture *The Flame and The Arrow*, who, as Dardo, ran along the edge of

the roof carrying another person depicted to be the boy, Rudie?

“Answer: Burt Lancaster.

“Interrogatory No. 10:

“Which are the scenes and what parts were performed by each of the said stunt men in the filming of the motion picture *The Flame and The Arrow*?”

Answer on pages 6 and 7, or, the answer at the top of [214] page 6, beginning with line 3:

“The sword fight between Dardo and Alessandro was prepared, set up, rehearsed, and, in part, photographed with Burt Lancaster, Robert Douglas, Don Turner and Albert Cavens. In this development of the scene, during the process of rehearsal and preparation, Don Turner frequently doubled Burt Lancaster, and Albert Cavens doubled Robert Douglas, and they sometimes appeared in these respective parts during the shooting of scenes, but in the final make-up of the picture the scenes which appear in the picture show Burt Lancaster himself and Robert Douglas himself staging the fight. Charles Horvath and Glenn Thompson were stunt guards in this scene.”

Further answer to that same interrogatory, beginning at the top of page 7.

Mr. Williams: Just a moment. As to the answer to that interrogatory, you are cutting out part of it. I assume the entire answer is to go in.

Mr. Swartz: Your Honor, under Rule 33 answers to interrogatories may be used to the same extent as Rule 26(d), which provides where there



are interrogatories answered by a person, they may be used for any purpose, or any part thereof, as admissions. We can pick out the parts we want, and so [215] far as the other parts, they are self-serving declarations, and under the cases I have they are not admissible under our objection.

Mr. Williams: You can't take a part of an answer, without the rest of it, and call it an admission.

The Court: You can offer the rest of it.

Mr. Williams: The point is, I am going to offer the rest of the answer, whatever it is, and it might be read at the same time.

The Court: He does not want to be charged with the responsibility for it.

Mr. Williams: I beg pardon?

The Court: He does not want to be charged with it as his evidence.

Mr. Williams: Yes.

Mr. Dryden: Further answer on page 7:

"Escape after capture. Dardo and Rudie make getaway over roofs.

"This scene, the latter part of which shows the figure of Dardo carrying Rudie in profile along the top of the roof, was photographed at least twice. In one of the takes Don Turner doubled for Burt Lancaster in the part of Dardo, with Billie Curtis doubling for Rudie. In the other take of this scene Burt Lancaster himself performed the [216] role of Dardo, with Billie Curtis doubling for Rudie. In the other take of this scene Burt Lancaster himself performed the role of Dardo, with Billie

Curtis doubling for Rudie. The latter pictures (those which show Burt Lancaster himself) are the ones which were actually used in the picture.”

I believe those were the answers to the interrogatories that we desire to read in evidence, your Honor.

Mr. Williams: May I take just one second to see if there is any additional part of this answer that I think is relevant?

Mr. Dryden: Oh, yes, there is one other page, your Honor, while he is doing that. Interrogatory No. 11:

“What are the names and latest known addresses of each stunt man who wore the costume of Dardo in the motion picture *The Flame and The Arrow*, and in which scenes did each perform.”

That answer is on page 8:

“Our records show only one stunt man who wore the costume of Dardo \* \* \* Don Turner.

“Scenes in which he performed:

“(a) Escape after capture over city rooftops. (In one take; not used in picture.)

“(b) 2nd Unit shot of Papa Pietro’s [217] rescue.

“(c) Sword fight between Dardo and Alessandro (In rehearsals and shots not shown in picture).”

Mr. Williams: I have no additional part of that answer under 10 that I desire to offer, your Honor.

Mr. Dryden: With that, the plaintiff rests, your Honor.

Mr. Williams: I see the witness has just come

in. May I have a minute to speak with him, your Honor?

The Court: Yes.

(A short interruption.)

Mr. Williams: May I have permission at this time to reopen the case for the purpose of putting on the witness?

The Court: Yes.

### WALTON C. AMENT

called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Walton C. Ament.

### Direct Examination

Q. (By Mr. Williams): What is your occupation?

A. I am vice-president and general manager of Warner Pathe News. [218]

Q. And how long have you been occupied in that position?

A. Warner Bros. acquired the company in August of 1947, I have occupied that position since that time and for eight years before that.

Q. So that in 1950, the spring and summer of 1950, you occupied that position? A. I did.

Q. Now, what is the business of Warner Pathe News?

A. It is primarily engaged in the production of newsreel which is distributed weekly in the United States. It is also distributed once weekly

(Testimony of Walton C. Ament.)

in Canada and once weekly in South America in Spanish and Portuguese.

Q. How is the newsreel made? I mean how do you get the material for the newsreel?

A. We have our own offices and camera crews distributed, we hope, strategically around the United States and around the world for material from the various areas of the world.

We have exchange arrangements with Pathe News London, Pathe Journal Paris and other affiliates.

We send them our film. They send us their film. Frequently we act especially upon request of each other for particular coverage. That film comes into New York City, our headquarters, where it is screened. [219]

A determination is made as to what shall be included in the various editions of the newsreel and then the necessary mechanical processes to place it in film which can be distributed in theatres is done.

Q. Thereafter do you have a system of distribution of the pictures throughout the world or throughout the areas where you show these newsreels?

A. Yes. The newsreel prints are distributed by Warner Bros. Distributing Corporation.

Q. Now, in the case of a news picture which was taken in Los Angeles what would be the process that it would go through?

A. It would be shipped to New York City where

(Testimony of Walton C. Ament.)

it would be screened by our editorial board and it would be used or not used depending upon its relationship to the value of other material that is available for that particular edition of the newsreel.

The amount of it which would be used would depend on two things: One, its intrinsic value and, two, its value in relation to the other material that is available for that particular edition.

It is necessary many times to reduce the length of a given subject in order to get it into the particular edition of the newsreel—all of the material that you feel should be included in that particular issue. [220]

Q. Now, if a newsreel subject is photographed in Los Angeles and sent to New York as you have described, it then follows the course of eventually being made into a print which is sent to various places in the world, including Los Angeles, is that correct?      A. That is correct.

Q. Now, with reference to the comment accompanying the pictures, who does that—makes the actual sound track which accompanies—which introduces pictures or comments on pictures which are shown in newsreels?

A. We have a staff of three writers who look at the picture after it has been finally cut. By cut I mean film cutting is more or less a word of art, I guess, in the motion picture business. The writer sees the picture at that time. The exact length of particular scenes in that picture or subject are then given to the writer. It is necessary for him

(Testimony of Walton C. Ament.)

to write the narration, the script for the narration which will accompany that picture in a fashion which will permit the arrator to be speaking of a given scene at the time that that scene is on the screen. It is a technique, a knack which has to be acquired by motion picture writers.

Q. In other words, the narration which accompanies the news item is written and spoken by individuals in the New York studio of Warner Pathe News?      A. That is correct. [221]

Q. Incidentally, this Warner Pathe News is owned by a corporation known as Warner News, Inc.?

A. Warner News, Inc. is the corporate name.

Q. Now, do you remember the matter of the preparation of an item in the newsreel which came out in July 1950 involving the picture *The Flame and The Arrow* and the sequence of Burt Lancaster in a bank counting \$1,000,000?      A. I do.

Q. And you were in charge of the matter of editing and setting up of that particular item in the newsreel which resulted?      A. I was.

Q. I show you now a document consisting of three typewritten pages headed with the wording: "Original script from studio" and ask you to examine this and state whether that is one of the copies of the script as you received it in New York from your representative in Hollywood?

A. That is a copy which accompanied the film as it was shipped to New York.

(Testimony of Walton C. Ament.)

Q. And that was sent to New York. Does it indicate who sent it to New York?

A. The cameraman, Vanderveer who was our cameraman here in this area.

Mr. Williams: May this, if your Honor please, which has been examined by the witness, the original script from [222] the studio, be marked in evidence as the defendants' next exhibit?

The Court: Hasn't it already been admitted?

Mr. Williams: No, this is a different copy than that which has already been entered.

The Court: Is it an exact copy?

Mr. Williams: Well, it has some language in it that is different and for that reason I think it should be in.

The Court: What is the materiality of that?

Mr. Williams: Well, it just happens, as will be developed, that this newsreel as it went out, went out in two different forms—one for national release and one for release to Los Angeles and this particular document which I am speaking of appears to be broken up into two parts, and apparently part of it was used for national release and the other part for Los Angeles release.

The Court: I would like to know what the materiality of it is. The one released in Los Angeles is the one the plaintiff is relying on.

Mr. Williams: That is the one which appears on pages 2 and 3 of this exhibit?

The Witness: (No answer.)

(Testimony of Walton C. Ament.)

Q. (By Mr. Williams): I mean that is the full script?

A. That is the full script of the material as it came in. [223]

The Court: What difference would it make whether they displayed that in New York or not?

Mr. Williams: I don't think that is material to this particular case.

The Court: Then why worry about it?

Mr. Williams: Because I think the full facts should be known.

The Court: I don't care what they displayed in New York.

Mr. Williams: Now, may I have this thing marked for identification?

The Court: Yes.

The Clerk: Defendants' Exhibit B for identification.

[See page 391.]

Q. (By Mr. Williams): Now, I show you a——

The Court: Unless counsel wants it in.

Mr. Dryden: No, your Honor. It was given to me but I didn't have a chance to look it over in detail.

Mr. Williams: I am going to refrain from referring to the national release and confine myself just to the Los Angeles release because I agree with your Honor it is not important.

The Court: The only thing is the national release might corroborate the Los Angeles release.

Q. (By Mr. Williams): I will now show you a document which is headed by the words in ink



(Testimony of Walton C. Ament.)

“used in toto” and ask you whether you recognize that document? [224]

A. This is a copy of the narration which accompanied the version distributed in Los Angeles and contains the credits which appear on the title which precedes the subject as it unrolls on the screen. The cameraman is Vandever and the voice is Andre Baruch.

Q. Now, I observe from this document concerning which you have just been testifying, that the language is different and less in words than the language of the document which has been identified as Exhibit B for identification—that is the language in the introduction, is that correct?

A. Yes, there is a difference.

Q. In other words, the language of the script as you received it from Los Angeles, the introductory language is as follows:

“The producers of *The Flame* and *The Arrow* offer a reward of \$1,000,000 to anyone who can prove that Burt Lancaster did not himself perform all the stunts attested to by the stunt man who worked in the picture.”

That is correct, is it not?

A. Yes.

Q. The language which actually appeared in the newsreel and was spoken in the newsreel is as follows:

“In Hollywood Burt Lancaster counts the \$1,000,000 reward offered by Warner Bros. to anyone [225] who can prove that Burt himself did not

(Testimony of Walton C. Ament.)

perform his daring stunts in *The Flame and The Arrow*”?

A. That is correct.

Q. Now, who was it that determined that the different language should be used, as indicated by these two documents?

A. I cannot fix such determination to a particular individual. I can explain why it is necessary to revise suggested narration at the time such narration is actually produced for the given newsreel subject, but who at that time did that, I do not know. It is my responsibility.

Q. Well, let me ask you this: Was it done by a person employed by Warner News, Inc.?

A. It was.

Q. And what type of person or what type of job would do that?

A. It would have been one of our editors in conjunction with the man who wrote the script. Such personnel would find it absolutely necessary to alter narration, if that narration did not——

Mr. Dryden: Just a minute.

The Court: I don't think this means very much. Let him go.

Mr. Dryden: All right.

The Witness: (Continuing) ——if the narration as news did not fit the picture. [226]

Q. (By Mr. Williams): Let me ask you this: Was any person in Warner Bros. Pictures, Inc. consulted or advised with reference to the change in the language of that narration?

(Testimony of Walton C. Ament.)

A. No, sir.

Mr. Williams: We offer the second document concerning which the witness has testified, the one headed, "Used in toto in L. A." as the exhibit next in order.

The Court: It may be admitted.

The Clerk: Exhibit C.

(The document referred to was marked Defendants' Exhibit C, and was received in evidence.)

[See page 393.]

Mr. Williams: I have no further questions, your Honor.

Mr. Swartz: May I have Defendants' Exhibit B, for identification?

The Clerk: Here it is. (Handing document to counsel.)

#### Cross Examination

Q. (By Mr. Dryden): This particular reference to the Flame and The Arrow was studio publicity for Warner Bros.; isn't that right? A. Yes.

Mr. Dryden: That is all.

The Court: That is all. [227]

Mr. Williams: Just a moment. I want to ask another question.

#### Redirect Examination

Q. (By Mr. Williams): The Warner News, Inc. is not a part of the publicity department of Warner Bros. Pictures, Inc., is it?

A. No. The expression "Studio Publicity" is an

(Testimony of Walton C. Ament.)

all-embracing one, which I take to mean covering all pictures which are produced by the Warner Studio. It is customary to include in our newsreel, as it is customary to include in all of the newsreels, subjects relating to the feature pictures which are produced by their associated feature company.

Q. It was in that connection that this particular subject was placed in this newsreel?

A. That is correct.

The Court: That is all.

(Witness excused.)

Mr. Williams: I have nothing further, your Honor.

Mr. Dryden: The plaintiff rests, your Honor.

The Court: I am ready to hear any argument.

Counsel, I might say, for the benefit of counsel, that I think this question of authority as to charging Warner Bros. with this is a very complicated picture. [228]

I think I am more concerned now at this feature as to whether or not the stunts, referring to the word "stunts" as used in here, were performed by Burt Lancaster, and I might say to start out you will have an uphill job, because I don't feel that the things that you claim, where a double was used, come in the category of stunts.

Mr. Dryden: Now, if the court please, I appreciate your observations there in that respect, but we do have decisions which we feel are conclusive on the first point that you refer to, with relation to these interlocking corporations using each other.

The Court: I want to say as to interlocking corporations, I think it is certainly not to the credit of a great motion picture concern to come into court and put out that publicity, and then, when it comes to a showdown, they have to come into court and claim they are not bound by it. I think it is misleading the public, and I think it is unfair advertising, as far as that is concerned. I don't think it is a credit to any corporation, notwithstanding the legal effect it may have. But I think that as long as this court room was wanted to be used for a publicity stunt to advertise their different methods, why, the court might just as well be frank about it and say that I feel, very frankly, that this court has been used as a publicity stunt to publicize Burt Lancaster and this picture that is three years old, [229] and when it started, it had that effect, because this case, so far as that is concerned, could ultimately have been taken care of without the time of the court and without the expense involved, or for a lot less than either side has spent.

Mr. Dryden: Then, according to your Honor's suggestion, I am going to confine my remarks, and I am going to assume, for the purpose of my argument, that this was a legitimate offer and was played to the public by this subsidiary.

The Court: I am not making any such ruling at this time.

Mr. Dryden: I appreciate that, your Honor.

The Court: But I have been giving this question of the evidence here a great deal of thought, and I might say I thought that the plaintiff had more

definite evidence than has been introduced here. The only definite evidence, so far as stunts is concerned, is running across that roof. There are trick pictures here, that is true, but, as said in the advertising, I think it was "daring stunts,"——

Mr. Williams: Yes, that is the language, your Honor.

The Court: There is nothing daring about running across that roof. There is nothing daring in participating in that fencing, the way it was conducted.

Mr. Dryden: Now, in that respect, your Honor, that is one thing I particularly want to direct your attention to. In other words, you will recall in this situation here that [230] this was an offer made to the public.

The Court: I might say this, that I think that the advertising is misleading. I don't know whether it was an offer or not, but it certainly gave the public the impression it was an offer.

Mr. Dryden: And, in so far as that situation is concerned, of course, when they gave that impression to the public by a reading of that transcript that was given to the public, certainly, any person reading it would feel that it was in the nature of an offer made to them if they could comply with the conditions.

The Court: The only thing is if a newspaper publishes an article that a certain party had offered a reward, that does not prove a reward had been offered.

Mr. Dryden: That is true, your Honor.

The Court: As a matter of fact, if Burt Lancaster said that an offer had been made by Warner Bros., it does not prove an offer had been made.

Mr. Dryden: You recall in that relationship—

The Court: Let's not dwell on that here, because I want to say, frankly, I don't think you have established the stunts in the usual and ordinary acceptance of the meaning of that word as proved in this case.

Mr. Dryden: Your Honor, in that respect, as you can well imagine, I have reviewed this thing myself very carefully. [231] The criterion your Honor has held is with relation to the conditions as they appear to the purchasing public who go into the theatre, and who see the picture in reliance on the representations made to them.

The Court: Let's get the exact words in that newsreel.

Mr. Dryden: That is Exhibit 6.

(The document was handed to counsel.)

Mr. Dryden: It says, "In Hollywood Burt Lancaster counts the \$1,000,000 reward offered by Warner Bros. to anyone who can prove that Burt Lancaster himself didn't perform his daring stunts in *The Flame* and *The Arrow*."

Now, in that respect, your Honor will recall that in Exhibit 9, which has been introduced, and in the original transcript, which was arranged out here directly by the publicity department through Mr. Evelove, there were representations made—

The Court: I know, but let's confine ourselves. Wherein do you claim there was a stunt? I have

given this a good deal of thought, because we have been living with it for three years, first with Mr. Marcus, and I have been after him a long time, and Mr. Williams has always put off the evil day of trying this case as long as he could, and he finally was tied down to a day certain, which he found he had to keep, because he didn't have any more alibis, and I want to say, frankly, I thought there was more to this case than appears on the surface. [232] I don't see that there were any daring stunts that were not performed by Burt Lancaster.

Mr. Dryden: Your Honor, let's take a look at this situation in this Exhibit No. 9, which is the thing that was attested to by the so-called stunt men, which is in evidence here, and as contemplating these daring stunts, particularly, was this sword duel with Robert Douglas.

The Court: You don't call that a daring stunt, do you?

Mr. Dryden: Certainly. Ten stunt men attested to it, and, certainly, it is a daring stunt, and looking at it in the film, where two men are engaged in an encounter of that nature.

The Court: But that is trick photography.

Mr. Dryden: Well, if the court please, after all a stunt, as defined by the only criterion I can look to, which in Webster's dictionary, which is a feat of skill and strength, or the like, one done to attract attention.

Now, certainly engaging in a duel of that nature that was shown to your Honor here in this film, where these two men were fighting with these broad



swords viciously is certainly one to attract attention.

As your Honor will recall, No. 1, in Exhibit 9 these stunt men have certified that those stunts that they attest to are the same stunts that are referred to here in the publicity, and among them was the duel with Robert Douglas. [233]

In addition to that, you will recall that the fencing master, who was here yesterday, testified that in so far as he was concerned, as you recall that situation, irrespective of what stunt men may have considered, he considered dueling of that kind, in so far as he was concerned, a stunt.

I appreciate that that statement is not binding upon your Honor, but when a fencing master says that, and there are ten of the stunt men on the scene attest to the fact, that means something.

As your Honor will recall, that particular affidavit states:

“The undersigned affiants, being duly sworn, depose and state:

“\* \* \*

“That the affiants are all recognized Hollywood stunt men employed in the production of motion pictures.

“That the affiants realize that the public believes that stunt men and not the stars execute the stunts seen in motion picture.

“But, that the affiants were present at Warner Bros. Studio on the set of *The Flame and The Arrow* at all times during the production of the Technicolor picture when Burt Lancaster person-

ally performed the following stunts, which, in the affiants' opinion [234] have never been performed before by any star in any one picture."

Then they listed in that group:

"Various and sundry riding and action stunts in battle scenes and combat encounters, as well as hand-to-hand fight and sword duel with Robert Douglas."

Now, there was only one sword duel with Robert Douglas in this situation, and that is the sword duel your Honor will remember involved the character Alessandro, and I can't imagine any more persuasive evidence to a layman as to what would constitute a stunt than a statement to the effect that these stunts had never been performed before by any movie star, as such, and that listed in that group by direct attention is the duel with Robert Douglas.

And the record is cold on that proposition that insofar as part of that sequence, and I would ask your Honor to bear in mind, if you would, there is no representation—the representation here is as follows:

"Burt Lancaster did all the stunts that were portrayed to the character Dardo."

There is no equivocation.

The Court: All the "daring stunts."

Mr. Dryden: Yes, as are outlined here in this series.

The Court: I know, but, counsel, this duel, the way they described it yesterday it doesn't present any stunt. [235]

Mr. Dryden: Of course, your Honor, I suppose we can describe any sequence insofar as these stunt men are concerned or people working in the studio to the effect that no matter what you do you are not going to get killed.

The Court: I realize they are not killing each other but when they worked out that sequence of the swords clashing by having it all made out like they would a dance, as one of the witnesses said, the steps and so forth that they take, I don't see where there is anything daring about that.

Mr. Dryden: Well, of course, your Honor, we must use this criterion. After all we are dealing with the public and I would ask you this. If you or myself would go in and see this film with relation to the action in that picture and observe that duel taken together with the publicity in this case, referring to the duel with Robert Douglas, if we as laymen are the ones to whom this invitation was extended we would consider that to be a stunt and that is a feat calling for skill and strength and I submit, your Honor, that I firmly believe that any person who will go in and observe that duel, which was specifically referred to in these affidavits, would consider that to be a feat of skill and strength.

There is no doubt about it, your Honor, that that was a good portrayal of a vicious fight where these swords were coming in close proximity to a person at all times who was [236] purported to be the star in this picture. And we know from the record in these cases it was represented to the public that the stunts he refers to he did himself—not the most

of them but he did them all and did them by himself and we know from the record in this case that in this sword fighting sequence, which has been recognized by every stunt man on the scene as a stunt which was referred to, that in there Don Turner, in some of those sequences, admitted to by both Burt Lancaster and Don Turner that it was Turner who was in that scene at the time that sword fighting was going on, particularly in those sequences where they were facing Alessandro and that is the dangerous time, where the man on the other side is fighting back, but it shows the action of the one who is using the sword.

Now, if we want to take, for example, we can take these situations, so far as going back of the sequence and have a man—we will say the public goes in and sees a man walking across a high sequence and we will say that was Don Turner. Well, it develops that there is a net three feet under him and on the reasoning of going back of the studio's scenes and trying to ascertain and determine what happened you say: "Well, there is no stunt involved there," but as far as the paying public is concerned that goes in and takes a look at that, they are entitled to believe that in those things that are represented as stunts to them, such [237] as this duel, that they are looking at all times at the persons represented to be doing those stunts.

I would say that insofar as stunts are concerned in the eyes of the industry, where they take these precautionary measures, probably according to the interpretation that we go behind the scene, your

Honor might very well figure that there is no such thing as a stunt in that all these precautions are taken and it is all laid out in front to make a minimum amount of hazard.

But I submit, your Honor, that isn't the test here. Here is represented a stunt. Here is what appeared on the film to the buying public as a stunt and here was a stunt in which Burt Lancaster didn't perform.

The Court: Counsel, you are going to have to get something stronger than running across a boardwalk as a stunt.

Mr. Dryden: Well, I am directing my attention to the duel. Now, insofar as the boardwalk is concerned, I would ask the court to remember this. You were kind enough to express yourself so that I would be prepared to discuss that aspect of the situation.

No. 1, I think that as laymen we would feel in seeing a sequence that if a man was actually running across a peak roof with a young boy over his shoulder, that that would require some skill and some strength insofar as a stunt is concerned. [238]

Now, in this particular sequence it does develop again, as we go behind the props, that we find that there are some 2x12s out there to minimize the so-called danger. But you will likewise remember that certainly there must have been some hazard or something requiring skill in that operation or strength, by reason of the number of safety precautions that were used back of the prop in case

that anything happened even to the person that was going by on that 2 x 12.

Furthermore, your Honor will recall that in the original——

The Court: Who hasn't found trouble walking a 2 x 12?

Mr. Dryden: I can't claim immunity in that respect at all.

But your Honor will definitely recall in this situation that in the interrogatories that were answered by Warner Bros. Studio on this proposition, under oath, it was represented that Burt Lancaster was the person who performed that act of running across the top of this roof. Now, under the record in this case we know it was not Burt Lancaster who went across that roof with the boy on his shoulder but it was Don Turner and again using the test of the layman as such, and I say this, your Honor, I might make this interjection, as I understand the applicable rules here they would apply **just the same** as though the reward was \$10 or \$10,000,000. Either way there is a reward due or there isn't a reward due. And the fact that the amount, relatively speaking, is [239] astronomical, at least for lack of a better description it hasn't anything to do with the legal principles involved.

The Court: I realize that.

Mr. Dryden: All right. Now, this publicity is extended to the average citizen who is going to see that film with relation to this running across the roof sequence at the time John Doe, the public, goes in there and in view of this publicity that

Burt Lancaster had done all of the stunts, they see a man apparently run across a roof top. It makes no difference if he was running on a place that was only six inches off the ground because in my opinion that portrays to the public, that particular sequence, an act being performed by the leading man who is the star in this picture.

You recall that one of the ideas behind this whole thing as discussed by Mr. Evelove, was that this was the first person since the days of Douglas Fairbanks whom he felt they could represent was capable of doing the various running and jumping deeds set forth in there.

Now, I am fully cognizant and likewise apprehensive of what your Honor has heretofore said about running across that roof, but nevertheless insofar as the public is concerned in making that observation, and in view of these representations and publicity they were entitled to interpret that in the light that it was portrayed to them on the screen. And interpreting it as such they were entitled to rely upon the [240] advertising and the claim that that was being performed by the leading man, Burt Lancaster.

And when we get down to the question of stunts—I don't see, your Honor, with relation particularly to getting back to this dueling sequence, and I would like to have your Honor take a look at that Exhibit No. 9, with relation to the representations prepared by the studio, as to the caliber of men who were attesting that that dueling sequence was one of a series of stunts referred to therein.

It doesn't make any difference how many gyrations they set out on the floor in the prop room or how many precautions were taken in advance, if it is a thing that is held out to the public to be a stunt, and there can be no doubt——

The Court: We are not dealing here with trick photography. Now, running across that roof is simply trick photography as far as that is concerned. It might be misleading in itself. It might have looked to the viewing public that they were running across that roof but as a matter of fact it was simply trick photograph which was misleading as far as the public is concerned, but from a visual point of view it has the same effect as if they were doing it.

Mr. Dryden: That is right. Of course when you get to drawing the line between what constitutes a stunt and trick photography we can take any one of these acts that was performed by Burt Lancaster to some extent constituted trick [241] photography. Certainly I don't think the defendants even would say that everything was done here by trick photography and were not stunts. For example, with relation to the situation of the man carrying the pole on his head. It was quite apparent and I think the evidence discloses it, that from the angle—the wide angle lens that was used that there was trick photography to make the pole look twice as long as it actually was. And also the same situation at the top of the castle. It is true he was doing tricks and that there was trick photography in that. It appeared to be away up on the side of the building when in truth and in fact it wasn't, but he was doing those stunts.



Now, you can't let the studio take the position here that actually what we meant was that anything that had anything to do with trick photography wouldn't come within the scope of the things that we have outlined here for you as we represent to be stunts.

There is no trick photography involved in a duel. Not to go out of the record, your Honor, but we might very well say that that sequence where Papa Pietro got caught by his foot and was pulled up was trick photography. The fact of the matter is a man got his neck broken in that sequence. But anything connected with the moving picture industry may have an aspect of trick photography, but certainly there is no place where the defendant can take a position here and [242] say, "Well, no, this was trick photography, this wasn't a stunt."

One of the most thrilling sequences and one of the things that would lead the public to think that the man had skill and strength of the highest caliber was this duel to death with Alessandro.

Now, with relation to the other sequences in there, particularly in view—I want to pin-point your Honor's attention specifically to first the fact that it was represented that this duel was a stunt and there is no doubt about the fact, at least in my mind as a layman, to observe that duel on the screen indicated to me, even here in court, as much as I worked on this case, that that certainly was a feat that required skill and strength.

Now, is you want to go, as I say, behind the sequence and see the various precautions, and those

are never disclosed to the public when they are having these feats of skill and strength.

I recall the evidence as being that whenever this stunt man was in the picture that you saw only his back. It seems that they transferred Lancaster and the stunt man back and forth so that one time we were getting the picture of one man and at another time the picture of the other.

Mr. Dryden: Yes, but you see that question was formed in this way and the record is cold on this, your Honor, with [243] relation particularly to Don Turner's testimony, which is verified by both Lancaster and the other fencing master. In those sequences in which the camera was over Alessandro's back facing Dardo, those dueling sequences were performed by Burt Lancaster. And of course all the time this is going on there is a real sword fight taking place there—at least insofar as the screen is concerned. It appeared to me to be and those sequences, or at least part of those sequences, when they reversed it around and showed Alessandro doing his best to stab or kill Dardo, at least part of those sequences it is admitted that the other man engaged in that duel, where the picture was being taken from behind, facing Alessandro, were in fact Don Turner. And as a matter of fact that is the most difficult aspect of this situation insofar as the duel is concerned in that particular sequence the adversary who was getting a face-on shot is the one making the thrust.

Now, those questions were framed with relation to Mr. Lancaster, relative to those sequences and

were particularly limited in scope to those sequences and on cross examination he told us that at least two of those sequences which were shot facing Alessandro, Don Turner was in fact the man that was the opposing duelist.

In the original situation Don Turner stated on direct examination that in all of the sequences in which he was [244] facing Alessandro he was the duelist. On cross examination he said in the entire sequence he probably doubled for Burt Lancaster in that dueling sequence—I think he said five or 10—it may have been five—at least five per cent of the time it was he. It doesn't make any difference whether it was five per cent or 50 per cent of the time. The idea was still portrayed to the public that that was Burt Lancaster in that duel being subjected as a leading man to the hazards that were portrayed to the public.

My co-counsel has some suggestion. May I have just a moment?

There is one principle here with relation, particularly to the interpretation of these questions of offers of reward, your Honor.

The Court: May I have Exhibit 9?

(Document handed to the court.)

The Court: I want the one which contains the transcript of the new item.

The Clerk: That is Exhibit 6.

(Document handed to the court.)

Mr. Dryden: The principle particularly we refer to, your Honor, is referred to in American Juris-

prudence under Section 21 relating to awards in which it says that:

“An offerer may prescribe any terms he may wish but since experience has shown that many persons [245] are profuse in their promises and slow in meeting them, they are inclined to take advantage of mere technicalities in order to avoid carrying out their end of the agreement. Courts have often held that substantial compliance with the terms is sufficient.”

Now, I am directing your Honor's attention particularly to the question of the technicalities that are involved here as they relate to going back and eliminating from the defendants' standpoint the stunt aspects of this thing by showing in the confines of the studio they used certain precautionary measures.

This offer was not made with a full disclosure that in any of these sequences and in this particular duel a fencing master lined it out like they were about to do a dance. This was portrayed to the public as a dueling contest specifically referred to as a stunt that was performed in its entirety by Burt Lancaster, the idea being to convey to the public that here is a leading man that subjects himself to all of the hazards throughout all of the sequences to any possible dangers incident thereto.

And certainly to look at that thing this was a feat of skill and strength and *is* you can believe what you are observing there, the slightest mishap could have ended in injury to somebody and probably

even more so if they had [246] forgotten their dance steps, as your Honor has described it.

Now, as I say, the reason that I particularly stress this dueling contest is by the very nature of the affidavits prepared by the defendants themselves to which they procured the signatures of 10 stunt men who have themselves classified that duel as a stunt.

The Court: Counsel, you are not altogether consistent in that statement because you objected yesterday when their witnesses attempted to describe what a stunt was. I held that a stunt should be such as defined in a dictionary and not what the men in the industry called a stunt.

Mr. Dryden: That is right. And I say the opinions of stunt men as determining the ultimate issue in this case are not admissible and your Honor so held. It is what the layman considers to be a stunt and you wouldn't expect to find in a layman the niceties, the technical niceties or definitions that would come from a man in the industry.

This exhibit was introduced into evidence by me without objection at the request of Mr. Williams and among those things even stunt men—I am not saying that is conclusive, but I am saying to a layman let us take this situation, your Honor. You or myself are called upon to classify a particular sequence as a stunt. Certainly it would be persuasive to us in determining what a layman should anticipate a stunt would be by what 10 leading members would be willing to swear [247] to under

oath was one in a series of sequences that constituted stunts.

The test, of course, is what the layman thinks. But certainly that is persuasive with relation if they think it is a stunt then a layman 10 times more is entitled to feel it is a stunt.

Now, insofar as I am concerned, in view of that evidence and in view of what was portrayed to the public here, irrespective of what was done that was out and out stunt it is admitted by the testimony here of all parties, not just a conflict, Don Turner, Burt Lancaster and the fencing master that at least in some of those sequences they were performed by Turner as a double for Burt Lancaster.

Now, insofar as this roof sequence is concerned, I appreciate what your Honor's feeling on that is. Here is another factor that I think would be persuasive insofar as the public is concerned. You recall here that it was necessary—let us go back a little bit. You remember when your Honor was talking the other day about the sequence of throwing the boy over Lancaster's shoulder and then running up a 45-degree angle, you said that might be a stunt but that the sequence of running across the roof is not a stunt because they had 2 x 12 planks under the edge of the roof.

They used the young eight or nine year old boy. They used him, No. 1, because Billie Curtis was getting a little [248] bit heavy, as he described it, and, No. 2, obviously they used the youngster

because they felt no hazard was involved, but every sequence performed on that roof top, Billie Curtis—I don't like to call him a midget because I know he isn't but "little man" as he called himself. Billie Curtis was used in each one of those sequences in crossing the top of that roof and again in that sequence it was portrayed to the public, the people who were paying the money, the very people to whom this offer was made, that an actual performance was being given and that is the criterion.

Let us be realistic for one minute without reference to going back of the props. Of what value in the show business and what would be the audience reaction if when they came in on that scene where Dardo was going to escape with his son, they took a back shot and showed that he had 2 x 12's there that he was running along at the time they were shooting these arrows at him and by the same token at the time of this duel to see what went on before he went downstairs to his loved one. If they took a prop shot there showing the fencing master lining out each and every one of his steps what would the audience think?

Those are things that are done in studios but the representations to the seeing public are entirely contrary.

The Court: Well, I look at it differently than you do, counsel. I think when they say "daring stunts," that is all [249] we are concerned with and not trick photography.

I will agree with you that I feel that this trick

photography and so forth may be misleading so far as the public is concerned, but they apparently like it.

Mr. Dryden: May I inquire of your Honor one question that might help me in concluding my argument.

Were there any sequences in this picture that your Honor felt fell into the category of "daring stunts"?

The Court: Certainly, I do. I think those acrobatic stunts were daring stunts.

Mr. Dryden: Well now, insofar as the acrobatic stunts were concerned, as between the acrobatic stunts and the dueling contest, I can see no particular distinction, your Honor. Both of them required skill and strength and the fact that wherever they may have been done that is the test of a layman. It isn't a question of trick photography. There was no trick photography in this duel as such. It is true that the course was laid out for them but that was an actual photograph of a duel that was occurring. The same as an actual photograph of the acrobatics.

The Court: I know, but the acrobatic stunts were actually performed. I think he said he practiced them for a long time before the shots were taken.

I look upon those as the stunts referred to in this ad.

Mr. Dryden: Well, of course, they listed, if your Honor [250] will take a look at Exhibit No. 9



there, they listed the acrobatic stunts, the same identical stunts that your Honor refers to and they listed the dueling contest with Douglas.

The Court: That is where you are not consistent, counsel. [251]

I have held right through in this case that what these stunt men call stunts are not necessarily stunts, and you want to use the language in the industry on one side, but when it comes to your side, you want me to apply the other definition.

Mr. Dryden: No, your Honor.

The Court: I have said once before that you have been inconsistent in that respect.

Mr. Dryden: I don't intend to be inconsistent, your Honor, because no matter what terminology they use, it is going to be the one that you use, in the last analysis, as to what does or does not constitute a stunt. But I am using that by way of illustration, particularly, as it relates to the public, that the acrobatic stunts would fall in the identical category of the dueling stunts.

Now, the duel was performed, and there was no trick photography there. The duel was performed and there were no spots where there was any trickery at all, other than Burt Lancaster was not used in the sequence where he was facing Alessandro. But so far as trick photography is concerned, there was none in the dueling sequence.

I think I have pointed out in this case the factors I rely upon, and I am well aware that the power of repetition carries no weight in this court, and,

certainly, I am not going to repeat myself in that respect. [252]

The Court: My experience with the bar has been that they indicate that sometimes repetition does count.

Mr. Dryden: That may be so. But, at least, in my concept of this court, I don't think it is necessary.

I can say that, in so far as using the word "stunt" that we have referred to here, there was no trick photography in that dueling stunt at all. There is no doubt about that.

The Court: Let's hear from the other side. Confine your argument to the dueling contest, counsel. I am not going to hold walking across that plank was a daring stunt.

Mr. Williams: I think it might be of assistance to the court if I referred to the evidence as to how that stunt action was actually portrayed.

The Court: I think I recall the evidence.

Mr. Williams: Mr. Cavens said that he did the entire fencing sequence with Mr. Lancaster, that it was photographed in its entirety with him portraying the part of Alessandro, and Mr. Lancaster playing the part of Dardo, and then he said that thereafter Mr. Lancaster did the entire thing with Robert Douglas, and then that in the actual makeup of the picture they interspersed, he said, two over-shoulder shots. Now, did he do that fencing? Assuming it is or is not a stunt, regardless of that, did he do that?

The evidence, and the only evidence—the evidence of [253] Mr. Cavens and the evidence of Mr. Lancaster himself is that he did the entire scene, and it was entirely photographed. I asked him:

“Q. Now, we come to the duel scene between you and the character Alessandro, which is played by Douglas, the actor Douglas, that duel scene in which you fight in the corridor and in which he is finally shown to be killed. Did you yourself do the entire action of that duel scene so far as the part Dardo is concerned?”

“A. Yes, I did, and it was photographed that way.”

Then at another place:

“Q. There was no part of the actual fencing in that particular sequence that you did not yourself personally do, was there?”

“A. I did the entire sequence, yes, sir.”

In the making of motion pictures they take a lot of additional short shots to fill in with master shots. The master shot, as Mr. Cavens described, was the shot showing the entire sequence. Then as they make up a picture, they cut a part here, and cut a part there, and sometimes shoot another angle, and for some reason or other maybe it is better photography, or maybe they get a little better lighting effect, and they will use one little short shot in that [254] sequence, but when the sequence is finally made up it looks like a continuous sequence. But it is actually made up of sequences which were perhaps done over a matter

of several days, and with many different cameras, and at different times.

So that what Burt Lancaster did was to do the entire sequence, and in this particular case—it might have been in others—in this particular case, as has been definitely stated, Mr. Cavens, who knows well, said there were only two little shots in which a rear view of the character Dardo was shown with Turner in that part.

Now, if that isn't doing the action, I don't know what it is.

Now, as your Honor has pointed out, we had here a very considerable inconsistency. On the one hand, they refused to accept the stunt men's definition, and we were in a position to develop the thing for you, and beyond any question.

The Court: What do you say about the offer of the reward?

Mr. Williams: Does your Honor want to go into that now?

The Court: I was just wondering, in view of the evidence here, whether you were going to take the position that the plaintiff did not make an offer of reward.

Mr. Williams: Yes, if your Honor please, I don't think that the defendant made an offer of reward for two reasons, and I could connect it fully for you, with cases. The first [255] is that the language of the so-called offer is not the language of an offer.

The Court: That is trick language, isn't it?

Mr. Williams: It is a recital——

The Court: It is trick language?

Mr. Williams: I think so. I don't like it at all myself, but we are talking about whether people contracted. They did not contract, whether I like it or whether your Honor likes it, and if I had been consulted in the matter or your Honor had been consulted in the matter, it would never have been done to start with. It was one of the——

The Court: Neither you nor I ever thought of the figure \$1,000,000.

Mr. Williams: I might have thought of it, but I would not have known what it meant.

If your Honor please, of course we can't delve into the vagaries of the mind of a publicity man. That is entirely beyond my comprehension, but the language itself is not the language of an offer.

The Court: There is one defect in that offer, no matter how you size it up, it seems to me. I haven't discussed it, because I have some different views,—that the offer was not made until he was notified it was withdrawn.

Mr. Williams: You mean the acceptance?

The Court: Yes, the acceptance of the offer.

Mr. Williams: I think the evidence is clear on that. He was informed the offer was withdrawn before he made any acceptance at all.

The Court: But I want to say, frankly, that I think that that publicity and advertising was misleading, as far as the public was concerned, and

it was purposely made for the purpose of misleading the public. They gave the impression that it was their intention that a reward of \$1,000,000 was being offered, and they were relying all the time upon the defects in the so-called offer, and that would have the tendency to mislead the public into believing an actual offer had been made. In this case I am satisfied that the plaintiff, before Mr. Mascus wrote the letter, had been notified that the offer of reward had been withdrawn, as far as that is concerned.

Mr. Williams: I am sure of that, your Honor.

The Court: And I think I have listened to enough argument, and maybe more than I am accustomed to, but I feel that so long as they are using the courtroom for a publicity stunt that we might as well let them use it, and go along with it. But I feel that the reason that cannot possibly be considered as an offer, in my view, is the news-reel. It says, "perform his daring stunts," and it is my view that there is no evidence here that Burt Lancaster did not perform his daring stunts. [257]

There is some evidence of so-called doubling there, and fake photography, but so far as the daring stunts are concerned, I find that Burt Lancaster did perform them, notwithstanding the fact I feel it is too bad that this court can't find sufficient evidence to chastise the defendants for fake advertising.

Mr. Swartz: Your Honor, I just want to be heard very briefly. May I say this?

I don't know what is going to happen after this hearing. I assure you we did not come into this on a publicity basis.

The Court: I am not saying that.

Mr. Swartz: You know, your Honor——

The Court: As counsel knows, I have tried to get this case cleaned up without making a public spectacle out of it, and I have felt, and I still feel that this case could have been gotten off our docket, the expense to the Government saved, and with a far less amount expended than this case has cost to try.

Mr. Swartz: I tried to, of course.

I would like also to say this, your Honor, before you leave the bench. Your Honor mentioned this in your ruling on law earlier, that it wasn't what they thought they said in the offer, the question was if the terms were promissory in any respect, or ambiguous; that it was in the position that the public so understood. Now, they did not make the [258] offer as an idle gesture. They wanted people to come into theatres, and if there are going to be findings, we want findings, and we would like to have the court indicate what it is going to do about this, because I represent that——

The Court: I want to say that I believe the evidence indicates before you wrote your letter accepting the offer, if there had been any offer, it had been withdrawn.

Mr. Swartz: We are not relying on a written acceptance. Mr. Williams tried to get us to do that,

and I refused to do that. We are relying on a telephone conversation which Mr. Gordon Files testified to. He accepted the offer. He didn't use the word "acceptance." He said he wanted it, and talked about it, but Mr. Files said he told him he didn't know anything about it. There was no withdrawal of the offer at that time. An offer can be accepted orally, as well as in writing, and I think the court's interpretation that we are relying on the written offer is not in accordance with the facts, and we would like that in the findings.

The Court: I know, counsel, you worked very diligently on this case, and I have rather admired your diligence in working on it. I thought you had a better case than you presented here. You may think you presented a good case. I don't think that you have shown here that Burt Lancaster did not perform any of the daring stunts. I don't believe you have done that. [259]

Mr. Swartz: Then let me say this: If your Honor makes findings on that, of course, we have the film here, and it is an exhibit by reference.

The Court: I am perfectly willing to make any such findings you want for the purpose of appeal. I will not make any trick findings, such as will tie you up on appeal,—

Mr. Swartz: No. I am talking about the offer of acceptance, your Honor.

The Court: —because I always want people to appeal any case where they feel they have been done an injustice, or that I have made an incorrect



ruling, because if I ruled in error in any respect, it should be corrected on appeal.

Mr. Swartz: I am not suggesting we are or are not going to appeal. All I will say—

The Court: Don't worry about that. You don't have to worry about me when it comes to appeals. I have had plenty of appeals, and know what they are. I have had plenty of reversals, and have had my share of affirmances.

Mr. Swartz: I am sure of that, your Honor.

The Court: And I am willing to take my risk and my chance, and if I am in error, I want the Circuit Court to correct it, and if I have done you or your client an injustice by ruling against you, because I always feel when I make a ruling, and it is contrary to law or the evidence, that I have hurt your client unfairly, and that unfairness [260] should be correct, and that is the job of the Circuit Court.

Mr. Swartz: Yes, your Honor. I am sorry if I raised my voice. It was only because I was so intensely interested.

The Court: I can understand that, because you people have been working on this case for three years, and I really feel that this case has been a case where the public has been misled, as far as that is concerned. By trick photography, and so forth, I think the public has been misled.

My sympathies are somewhat with you in this litigation, and have been. But you have to produce the evidence here, and you haven't done it, so there

is only one thing I can do, and that is rule against you.

There is no reason for taking this under submission. It will just make you that much more work, and you have done too much already. Both sides have, and the other side will certainly get their pay.

Mr. Williams: Thank you, your Honor.

The Court: Judgment will be for the defendants, and the defendants' counsel will draw the necessary findings.

Mr. Williams: Yes, your Honor. [261]

[Endorsed]: Filed April 16, 1954.

No. 12479-BH  
 FOR IDENTIFICATION  
 EXHIBIT No. 3  
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 By *Mosnier*  
 Deputy Clerk

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**Says:**



THE MIRROR — LOS ANGELES, MON., JULY 17, 1950

— AP WIREPHOTO

**BURT LANCASTER BACKS UP HIS OFFER**  
 Seeing is believing to Kendis Rochlen.

**THERE'S A \$1,000,000 FOR YOU;  
 JUST PROVE BURT DIDN'T DO IT**

Things can't be so bad in the movie business, Warner Bros. offered to give away \$1,000,000 today.  
 It's waiting in cash for anyone who can prove Burt Lancaster didn't do all the stunts he is shown doing in a new picture.  
 In "The Flame and the Arrow," apparently no drawing-room drama, Lancaster performs somersaults from horizontal bars, walks across a pole 35 feet above ground, and scales walls like a window washer gone berserk.  
 Virginia Mayo costumes with Lancaster in the film. Enough to make any man acrobatic.



PLAINTIFF'S EXHIBIT No. 4

From: Warner Bros. Studios  
Burbank, Cal.—HO-91251

Bill L. Hendricks—71350

The producers of "The Flame and The Arrow," soon to be distributed by Warner Bros., have a million dollars to give away.

The sum is offered to anyone who can prove that Burt Lancaster did not himself perform all the stunts attested to by the stunt men who worked in the picture.

Daring exploits performed by Lancaster in "The Flame and The Arrow" include giant somersaults from six horizontal bars, walking across a pole thirty-five feet in the air, human pyramids, wall scaling and gymnastics performed atop a pole held by sturdy, 145-pound Nick Cravat, Burt's lifelong friend and former circus partner.

The million dollar offer was made yesterday as Lancaster went into the vaults of the Bank of America to film Warner Pathe newsreel scenes in which the reward offer is made.

Virginia Mayo co-stars with Lancaster in "The Flame and The Arrow," a Norma-F.R. production for Warner Bros. release. The film was directed by Jacques Tourneur.

From Warner Bros. Studio, Burbank, Calif., H091251 Ned Moss.

In one of the most unusual documents ever executed in Hollywood, 10 of the leading stunt men in motion pictures have signed an affidavit attest-

## Plaintiff's Exhibit No. 4—(Continued)

ing to the fact that Burt Lancaster did all his own stunts in "The Flame and The Arrow," a Norma-F.R. production in Technicolor for Warner Bros. distribution.

The 10 stunt men swore they "were present at Warner Bros. studio on the set of 'The Flame and The Arrow' at all times during the production of the Technicolor picture when Burt Lancaster personally performed the stunts, which in the affiants' opinion have never been performed before by any star in any one picture."

Lancaster, who co-stars with Virginia Mayo in the swashbuckling film, was a circus aerialist and acrobat before coming to Hollywood. Among his feats of derring-do in the picture were somersaults and pirouettes from horizontal bars 20 feet above the ground, climbing a 25-foot pole balanced on the forehead of featured player Nick Cravat, climbing a 30-foot rope hand over hand, walking across a pole tight-wire fashion 35 feet in the air without a net and various riding and action stunts in battle scenes.

The 10 stunt men who signed the affidavit are Allen Pomeroy, Louis G. Tomei, "Sailor Billy" Vincent, Mickey McCardle, Boyd "Red" Morgan, Allen Wyatt, Glenn Thompson, Charles F. Norvath, Paul Baxley and Joe P. Smith.

There's going to be no doubt about who did the stunts in "The Flame and The Arrow" if 10 of Hollywood's leading stunt men have anything to say about it. The stunts, they depose, swear and

## Plaintiff's Exhibit No. 4—(Continued)

otherwise declare, were done by none other than Burt Lancaster himself.

In an affidavit signed by the 10 stunt men and executed by a notary public, the stunters swear that "Burt Lancaster alone, without the aid of trick photography or trick means," did the Burt Lancaster stunts for "The Flame and The Arrow," a Norma-F.R. production for Warner Bros. distribution.

Among the death defying deeds listed as having been performed by Lancaster, former circus aerialist and acrobat, for the love of his leading lady, gorgeous Virginia Mayo, are some of the most dangerous tricks ever performed before a camera.

The stunt men, Allen Pomery, Louis G. Tomei, "Sailor" Billy Vincent, Mickey McCardle, Boyd "Red" Morgan, Allan Wyatt, Glenn Thompson, Charles F. Horvath, Paul Baxley and Joe P. Smith, swear in the affidavit they "were present at Warner Bros. studio on the set of 'The Flame and The Arrow' at all times during the production of the Technicolor picture when Burt Lancaster personally performed the following stunts, which in the affiants' opinion have never been performed before by any star in any one picture:

"Executed somersaults and pirouettes from horizontal bar to horizontal bar (six in all) 20 feet above the ground, with swing up from one bar to the other, upstanding on one foot. From last bar he dropped 10 feet to a balcony, where Nick Cravat

Plaintiff's Exhibit No. 4—(Continued)  
approached with pole on which he slid to the ground  
for a grand finale.

“Climbed up a 25-foot pole balanced on the fore-  
head of Nick Cravat, to finish off in a performance  
resembling a flag, and so called, professionally, a  
‘flag.’

“From 35 feet in the air, walked across a pole  
in tight-wire fashion from ledge to ledge, with no  
net underneath.

“Climbed a 30-foot rope, hand over hand.

“Received Nick Cravat in his arms from high  
jump and tossed Cravat away in a somersault in  
swing time.

“Executed a ‘three man high’ in the company of  
Nick Cravat and one, with finish off including a  
lean to ground, fall and then a roll over.

“Various and sundry riding and action stunts in  
battle scenes and combat encounters, as well as  
hand-to-hand fight and sword duel with Robert  
Douglas.”

And that's the low-down from 10 of Hollywood's  
bravest stunt men, who themselves make a living  
performing death-defying antics for the cameras. It  
marks the highest praise Burt Lancaster could ever  
receive.

[Endorsed]: Filed July 21, 1953.



PLAINTIFF'S EXHIBIT No. 5

Prepared Script as Okayed by  
Mr. Obringer

7/11/50

NEWSREEL

Close Shot. A Pile of Money. (Moving Camera). It is piled on the floor of a bank vault. Camera Pulls Back to reveal Burt Lancaster counting it, dollar by dollar.

Narrator's Voice: (Over above). The producers of "The Flame and The Arrow" offer a reward of one million dollars to anyone who can prove that Burt Lancaster did not himself perform all the stunts attested to by the stunt men who worked in the picture.

Lancaster has reached the last of the huge pile of bills.

Burt: 999,998; 999,999—one million! (he wipes his brow) I had to count it three times to make sure.

Int. Bank Vault. Another Angle: As three girls enter—Kendis Rochlen, Maralyn Marsh, and Ann Helming:

Kendis: Mr. Lancaster, I'm Kendis Rochlen of the Los Angeles Mirror. Is this on the level?

Burt: It's so much on the level, I'm trying to figure out a way to win it myself.

Maralyn: Burt, I'm Maralyn Marsh of International News Service. I just saw "The Flame and The Arrow"—and you can't make me believe that

## Plaintiff's Exhibit No. 5—(Continued)

was you doing those somersaults from six horizontal bars, fifty feet in the air!

Burt: Look, before I got lucky in Hollywood I made by living in a circus. I used to do that stuff for coffee and doughnuts.

Maralyn: What happened if you missed?

Burt (shrugging): Somebody got an extra doughnut.

Ann: Mr. Lancaster, I'm Ann Helming of The Hollywood Citizen News. It's hard to believe the producers want to give away a million dollars.

Burt: They really don't want to give it away. But it's a bona fide offer. So if anybody wants it, they're going to have to fight for every dollar!

Ann: What if somebody proves it wasn't you, walking across a pole thirty-five feet in the air?

Burt: They'd get the million—and I'd go back to coffee and doughnuts.

Kendis (to the others): Come on, girls—let's run "The Flame and The Arrow" again!

They start out. The girls move together. Burt puts his arms around all three of them and clasps them tightly.

Maralyn: Now what?

Burt: Nothing—this is good enough for me! He winks into camera as we

Fade Out.

[Endorsed]: Filed July 21, 1953.

PLAINTIFF'S EXHIBIT No. 6

ACTUAL NEWSREEL SCRIPT

Anncr.: In Hollywood, Burt Lancaster counts the one million dollar reward offered by Warner Bros. to anyone who can prove that Burt Lancaster, himself, didn't perform his daring stunts in "The Flame and The Arrow."

Lancaster: 999,998, 999,999, One million dollars. I had to count it three times to make sure.

Girl: Here he is, ladies.

Rocklin: Hello, Burt. I'm Miss Rocklin of the Los Angeles Mirror.

Lancaster: How do you do?

Rocklin: Tell me, is this really on the level?

Lancaster: Really on the level? Well, so much so that I'm trying to figure how to win it myself.

Marsh: Burt, I'm Marilyn Marsh of International News Service.

Lancaster: How do you do, Ma'am?

Marsh: I just saw you in "The Flame and The Arrow." Now look. You can't make me believe that it was you doing those summersaults from, what was it, six horizontal bars, 50 feet in the air?

Lancaster: Sixty feet. Why not? Before I got lucky in Hollywood, I used to make my living in the circus. I did stuff like that for coffee and donuts.

Marsh: What happened if you missed?

Lancaster: Somebody got an extra donut.

Helming: Burt, I'm Ann Helming of the Hollywood Citizen-News.

## Plaintiff's Exhibit No. 6—(Continued)

Lancaster: Well, hello.

Helming: It's hard to believe that any producer wants to give away a million dollars.

Lancaster: Well, Ann, they really don't want to give away a million dollars if they can help it. But this is a genuine, bona fide offer.

Helming: What if somebody proves that it wasn't you who walked across the pole 35 feet in the air?

Lancaster: If anybody can prove that, they'll get the million dollars and I'll go back to coffee and donuts. Satisfied?

Rocklin: Sounds good enough for me. Come on, girls, let's take another look at "The Flame and The Arrow."

[Endorsed]: Filed July 21, 1953.

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PLAINTIFF'S EXHIBIT No. 7

This Agreement, made and entered into this 8th day of July, 1949, by and between Norma Productions, Inc., a California corporation, having its principal business office located at 8747 Sunset Blvd. in the City of Los Angeles, State of California, hereinafter referred to as the "Producer", and Warner Bros. Pictures, Inc., a Delaware corporation, having its principal business office at 321 West 44th Street, New York City, New York, hereinafter referred to as "Warner";

Witnesseth:

Whereas, the Producer is engaged in the business of producing photoplays and distributing

## Plaintiff's Exhibit No. 7—(Continued)

and/or causing the distribution of the same throughout the world; and

Whereas, Warner is also engaged in the business of producing photoplays at its studio at Burbank, California, and distributing and/or causing its subsidiaries to distribute the same throughout the world; and

Whereas, the Producer desires to produce one photoplay and to have Warner completely finance the production thereof by advances to Producer by way of loans or credits, or both, as hereinafter referred to, and upon the completion of said photoplay to grant Warner, by way of exclusive license for the period hereinafter referred to, the right to distribute or cause to be distributed said photoplay and trailer thereof throughout the world, upon the terms and conditions hereinafter set forth; and

Whereas, Producer has advised Warner that Mr. Burt Lancaster will portray the leading male role in said photoplay, and that the final screen play to be used as the basis of said photoplay shall be based upon the story entitled "The Hawk and The Arrow", said screen play having heretofore been written and composed by one Waldo Salt, and that Mr. Harold Hecht will supervise the production thereof; and

Whereas, Warner is willing to furnish or make available to Producer at its studio at Burbank, California, or at such other place in the State of California to which Warner may transfer the major portion of its production activities, all necessary

## Plaintiff's Exhibit No. 7—(Continued)

physical facilities, material, equipment and, if and when requested, personnel normally and customarily required for the production of the photoplay contemplated hereunder, in order that the Producer may use said studio facilities and personnel for such purpose; and

Whereas, as an inducement to Warner to enter into this agreement, the Producer represents to Warner that it is a corporation duly qualified to do business in the State of California, and that it will produce said photoplay with an experienced staff and personnel in all respects adequate to produce a so-called "Class A" photoplay, as such term is known and understood in the motion picture industry, and which said photoplay shall be of the general type and quality of those of similar cost heretofore produced by Warner and distributed by Warner and/or its distributing subsidiaries; and

Whereas, Warner, in the financing of the production of each said photoplay, is willing to advance to the Producer by way of loans, in the manner hereinafter set forth, seventy per cent (70%) of the direct cost of producing said photoplay, with Warner financing the remaining thirty per cent (30%) of the direct cost of said photoplay by way of credits, as hereinafter referred to;

Now, Therefore, in consideration of the mutual covenants and agreements of the parties hereto and of the representations and warranties of the Producer, as in this agreement set forth, it is hereby agreed as follows:

## Plaintiff's Exhibit No. 7—(Continued)

1. Warner agrees to furnish, and Producer agrees to purchase, let, rent or hire from Warner, all physical facilities, material, equipment and, if and when requested, personnel normally and customarily required for the production of the photoplay and contemplated hereunder, all of which are defined for the purpose hereof as "facilities", which term shall include, without limiting the generality of the foregoing, all reasonable and necessary studio facilities, stages, sets, set dressings, props, wardrobe, material and supplies (including negative raw stock, if available), sound equipment other than electrical equipment, a fair proportion of available electrical equipment, electricity and other utilities, transportation, labor, cameramen, cutters, cutting rooms, dressing rooms, laboratory facilities with competent and experienced personnel for the processing of production negatives, rushes and dailies, publicity personnel, clerical assistants and other personnel and technical assistants needed for the proper production of said photoplay, together with all facilities and equipment required or as may be reasonably necessary in connection with the production of said photoplay. Warner further agrees to furnish the Producer with reasonable and necessary continuous office facilities and furnishings for its own use, but only in connection with its production activities with respect to the photoplay produced hereunder. No facilities which are supplied to the Producer hereunder, for which Pro-

## Plaintiff's Exhibit No. 7—(Continued)

ducer is not charged, shall be deemed sold to the Producer, and all such facilities (including, but not limited to, sets, set dressings, props, wardrobe, material, equipment and supplies) shall be and remain the property of Warner. In the event that any facilities, which are charged to the cost of production of said photoplay, are not entirely consumed in the production thereof so that salvage value remains in such facilities, then and in that event the salvage value thereof shall be credited to the cost of production of said photoplay, which said salvage value, for the purposes hereof, shall be deemed to be twenty-five per cent (25%) of the cost thereof in the event such facilities are retained by Warner or Producer. Warner's obligation to furnish Producer facilities hereunder shall be subject to the same being available for Producer's use at such time or times as will not interfere or conflict with the production plans of Warner with respect to Warner's use of the facilities involved.

With respect to the personnel of Warner whose services are required by Producer, it is agreed, subject to the provisions of paragraph 4 hereof, that Producer shall make known to Warner its requirements of such personnel and Warner, in turn, shall submit or make known to Producer the names of available personnel of the class or type requested by Producer, but in this connection it is expressly understood and agreed that Warner shall not be obligated hereunder to submit to Producer the names of any of its personnel who may



## Plaintiff's Exhibit No. 7—(Continued)

at such time be engaged in production activities for Warner or others or who may at such time be assigned, or who are contemplated by Warner to be assigned, to production activities for Warner or others. Upon Warner's making known or submitting to Producer the names of any personnel of the particular type or class desired by Producer, Producer shall have the right to make its own selection of such personnel, such as, but not limited to, cameramen, cutters and other creative and semi-creative personnel. All key personnel, such as costume designers, composers, artists, writers and directors, whose services may be furnished Producer by Warner hereunder shall be furnished Producer under a so-called "lending" agreement, which said lending agreement shall include terms and conditions customarily included by Warner in its lending agreements involving the same type personnel. It is agreed that Producer shall select and engage an assistant supervisor of production to render such type duties in connection with each photoplay produced hereunder. It is further agreed that Producer shall select and engage, with respect to said photoplay, a secretary who shall render such type services to the supervisor of production. It is agreed, however, that Producer shall not be entitled to charge, as a part of the direct cost of producing said photoplay, for the services of any said assistant supervisor of production a sum in excess of Three Hundred Fifty Dollars (\$350) per week, and not in excess of the aggregate sum of Five

## Plaintiff's Exhibit No. 7—(Continued)

Thousand Dollars (\$5000), and that the compensation to be paid said secretary shall not exceed the weekly compensation customarily paid by Warner to its secretarial help performing the same type of duties and services. If Producer shall make use of any said talent in the employ of Warner, the cost to Producer therefor shall be on the basis and in the same manner and method that Warner uses in charging services of such talent to its own photoplays. In this connection, Producer shall be entitled to assume that it shall be charged for all personnel furnished Producer on a weekly or per diem basis at their regular weekly, daily or hourly rate of compensation, unless Producer is advised by Warner to the contrary prior to Producer's use of the services of the personnel involved; provided, however, it shall be incumbent upon Producer to inquire as to the charges to be made it for the services of artists, costume designers, composers, directors and writers prior to Producer's use of the services of such type personnel and, moreover, it shall be optional with Producer as to its use of the services of such type personnel. Warner shall keep a record of the cost to it of all facilities furnished or made available to the Producer pursuant to this paragraph 1 according to its regular accounting practice and in the same manner in which it keeps accounts of photoplays produced by it.

It is agreed that until the direct cost of said photoplay has charged thereto a sum equal to seventy per cent (70%) of the budgeted direct cost

## Plaintiff's Exhibit No. 7—(Continued)

thereof, which said seventy per cent (70%) shall be advanced by Warner as herein provided for and first expended in connection with the production of said photoplay, Warner shall bill Producer weekly, in accordance with the current and established accounting practice of Warner, for all or such portion of said seventy per cent (70%) of said budgeted direct cost which represents credits allowed Producer by Warner resulting from Warner's furnishing Producer studio facilities and personnel in connection with the production of said photoplay. When the direct cost of said photoplay has reached the sum of seventy per cent (70%) of the budgeted cost thereof, then thereafter Warner agrees to furnish, by way of studio facilities or personnel, the additional financing necessary to completely produce said photoplay, including the trailer thereof, such studio facilities and personnel furnished by Warner, as aforesaid, to be charged as a direct cost of said photoplay and to be included in the budget thereof to be prepared by Producer as herein provided for, except such amounts thereof which are included in the overhead charge to be made by Warner to the direct cost of said photoplay, as in paragraph 7 hereof provided for. Warner agrees to keep at its studio at Burbank, California, full, true and accurate books of accounts, together with vouchers and receipts, representing the charges or costs of Warner in furnishing Producer studio facilities and/or personnel, as aforesaid, and, as well, full, true and

## Plaintiff's Exhibit No. 7—(Continued)

accurate books of accounts, together with vouchers and receipts, representing the cost to Warner of financing, by way of studio facilities or personnel, the completion of said photoplay from and after the time the direct cost thereof has reached seventy per cent (70%) of the budgeted cost thereof, as above referred to.

Warner shall furnish Producer with statements at intervals during the period commencing with the start of production of said photoplay and ending when the production thereof is completed, which said statements shall show the current direct cost of producing said photoplay and the amount of such direct cost financed and/or contributed by Producer, as herein provided for, and the amount of the additional direct cost of said photoplay representing the financing thereof as undertaken by Warner hereunder. All such statements shall be subject to change in order to give effect to any items overlooked in the preparation thereof or to correct any error in the computation of any items included therein. Warner agrees that the Producer shall have the right, during reasonable business hours within a period of two (2) years from the completion of production of each photoplay, at Producer's cost and expense, to examine and take excerpts from the books, records and accounts maintained by Warner, for the purpose of inquiring into any records or transactions relating to the advances, credits or charges for studio facilities or personnel furnished Producer by Warner or

## Plaintiff's Exhibit No. 7—(Continued)

furnished by Warner hereunder in connection with the production of said photoplay.

The Producer agrees that the proceeds of the loan, hereinafter referred to, to be made to it by Warner with respect to said photoplay shall be expended only to defray costs and expenses directly incurred in connection with the production of said photoplay: provided, however, it is agreed that in the event the actual cost of any items included in the budget of said photoplay shall exceed the budgeted cost thereof, such excess cost, if attributable to the actual cost of producing said photoplay, shall, nevertheless, be included as a part of the direct cost of producing said photoplay, and shall, after the expenditure by Producer of the first seventy per cent (70%) of the budgeted direct cost of said photoplay, be financed by Warner as herein provided for. Producer agrees to keep full, true and accurate books of accounts, together with vouchers and receipts, representing production expenditures of said photoplay made by Producer, exclusive of studio facilities and/or personnel furnished Producer by Warner hereunder. Producer agrees that Warner shall have the right during reasonable business hours, within a period of two (2) years from the completion of production of said photoplay, at Warner's cost and expense, to examine and take excerpts from the books, records and accounts maintained by Producer with respect to said photoplay, for the purpose of inquiring into any records or transactions relating to Pro-

## Plaintiff's Exhibit No. 7—(Continued)

ducer's financing of said photoplay. It is expressly agreed that all financing made by Warner hereunder by way of cash, credits and/or facilities in connection with the production and/or distribution of said photoplay shall be repaid to Warner only from funds or proceeds derived from the rental and distribution of said photoplay in the manner in this agreement provided for, and the Producer shall not be liable to Warner for the repayment to Warner of any advances or financing made to Producer by Warner hereunder from any other assets of Producer.

It is understood that, upon the apparent completion by Producer of the photoplay produced hereunder, Warner may desire to dismantle and remove all sets or settings used by Producer in connection with the production thereof and to make such stage space and sets available for the production of other photoplays. Accordingly, it is agreed that when Producer shall have apparently completed production of said photoplay, should Warner desire to dismantle and remove all or some of the sets or settings used by Producer, Warner shall make such fact known to Producer, and, if Producer shall require any such sets or stage space to be maintained and not dismantled for Producer's further use thereof, Producer shall promptly notify a responsible officer of Warner and Warner, under such circumstances, will use its best efforts to maintain such sets or stage space in order to accommodate such further reasonable requirements and

## Plaintiff's Exhibit No. 7—(Continued)

use thereof by Producer. Should the Producer not make known to Warner that it desires to make additional or further use of the sets or stage space involved, as aforesaid, then and in that event Warner shall have the full and unrestricted right to dismantle all or any part thereof.

2. With respect to the financing of the photoplay contemplated hereunder, it is agreed, as hereinbefore set forth, that Producer shall finance the first seventy per cent (70%) of the direct cost of producing said photoplay, and the balance of the financing of said photoplay, including the production of a trailer thereof, shall be furnished by Warner. In this connection, Warner agrees to advance by way of a loan to Producer in the aggregate a sum equivalent to seventy per cent (70%) of the budgeted direct cost of said photoplay, representing a fund to be used exclusively by the Producer for the purpose only of financing seventy per cent (70%) of the direct cost of said photoplay. Said seventy per cent (70%) sum shall be advanced by Warner to the Producer as follows, to wit: During the term hereof and prior to the commencement of actual physical production of the photoplay to be produced hereunder, Producer, upon request, shall be advanced by Warner such sum or sums as Producer may reasonably require, not to exceed in the aggregate the sum of One Hundred Thousand Dollars (\$100,000), for so-called pre-production expenditures in connection with the direct cost of the photoplay to be pro-

## Plaintiff's Exhibit No. 7—(Continued)

duced hereunder, and all such advances shall be accounted for by Producer as a part of the direct cost of said photoplay. Should Producer not account to Warner for all of said pre-induction advances as a expenditure for actual direct cost of production of said photoplay, then and in that event Producer shall, upon demand, refund to Warner any such unaccounted for advances, or Warner, at its option, may deduct and retain as its own, from any and all proceeds payable to Producer under the provisions of subdivision (i) of paragraph 11 hereof, the amount of such unaccounted for advance. The balance of said seventy per cent (70%) shall be advanced by Warner to Producer in eight (8) equal weekly installments, the first of which installments shall be paid to the Producer on Wednesday of the week next following the preceding Saturday of the week during which actual physical production of said photoplay shall have commenced, and a similar installment shall be paid Producer by Warner on Wednesday of each of the next succeeding seven (7) weeks. The Producer agrees to issue its promissory notes in the form attached hereto marked "Exhibit 2" covering each aforesaid advance and installment, each note to be dated as of the date each such advance and installment is paid to the Producer and to provide for interest on the principal sum of each note at the rate of four per cent (4%) per annum from date until paid, the payment of said notes and interest thereon to be made by Producer



## Plaintiff's Exhibit No. 7—(Continued)

as provided for under subdivision (VI) of paragraph 11 (a) hereof, said notes to carry a notation or statement on each thereof that the same are made subject to the provisions of this agreement. It is agreed that all financing made by Warner hereunder by way of cash, credits and/or facilities in connection with the production of said photoplay shall bear an interest charge thereon to be made by Warner at the rate of four per cent (4%) per annum until paid, said financing, together with said interest charge thereon, to be recouped and repaid to Warner as provided for in subdivision (V) of paragraph 11 (a) hereof. In this connection, and for the purpose of determining the amount of interest to be charged by Warner in connection with its financing hereunder, it is agreed that the amount of the weekly accrued cost of production of said photoplay financed by Warner (as distinguished from the financing of said photoplay by Producer) shall be the amount used as the basis of computing said interest charge, and said interest shall be charged from the date of such respective weekly accrued cost until the payment thereof, as in this agreement provided for. It is further agreed that the above referred to advance and weekly installments made by Warner to Producer shall be deposited in a bank to be selected by Producer and designated "Norma Productions Special Account", and that said depository shall be directed to honor and pay checks, drafts, and other instruments or orders for the payment of money drawn

## Plaintiff's Exhibit No. 7—(Continued)

against said deposit when the same are signed by one of two persons to be designated from time to time by Producer, representing Producer, and either F. E. Witt or C. H. Wilder, representing Warner, and Producer agrees to take such steps as are necessary to effectuate the foregoing arrangement.

3. The term of this agreement shall commence August 15, 1949, and on or before said date Producer agrees to deliver to Warner the final screen play intended to be used as the basis of the photoplay hereunder, and, conditioned upon Producer so delivering said final screen play and Warner making available to Producer the reasonable studio facilities required for the production of said photoplay, as hereinbefore referred to, Producer agrees to commence, on or before the expiration of a period of five (5) weeks subsequent to said date of August 15, 1949, actual physical production of said photoplay.) The Producer agrees to diligently and economically proceed with the production of said photoplay until fully completed, and, when completed, to deliver said photoplay to Technicolor Motion Picture Corporation as in paragraph 8 hereof provided for. The Producer covenants that the photoplay produced by it hereunder will be produced by it in such fashion and manner so that Producer and/or Warner shall be entitled to receive a Production Code Certificate from the Motion Picture Producers Association of America, Inc. with respect thereto. [See 8-3-49 letter amend.]

Plaintiff's Exhibit No. 7—(Continued)

[Warner Bros. Pictures Inc. Letterhead]

Norma Productions, Inc.

August 3, 1949

8747 Sunset Blvd., Los Angeles, Calif.

Gentlemen:

With reference to that certain agreement between us dated July 8, 1949, relating to the production of the picture based upon the story "The Hawk and the Arrow", this will confirm the following understanding and agreement between us with respect thereto:

The first sentence of paragraph 3 of said agreement shall be deemed deleted and stricken therefrom and the following sentence shall be deemed inserted therein and shall have the same force and effect as though written into said paragraph 3 of said contract at the time of the execution thereof by each of us:

"The term of this agreement shall commence August 15, 1949. On or before August 31, 1949, Producer agrees to deliver to Warner the final screen play intended to be used as the basis of the photoplay hereunder, and, conditioned upon Producer so delivering said final screen play and Warner making available to Producer the reasonable studio facilities required for the production of said photoplay, as hereinbefore referred to, Producer agrees to commence actual physical production of said photoplay during the period September 19, 1949 to October 3, 1949, both dates inclusive."

Except as hereinabove specifically set forth, said contract of July 8, 1949, shall not be deemed other-

## Plaintiff's Exhibit No. 7—(Continued)

wise changed, altered, modified or affected in any manner whatsoever.

If the foregoing is in accordance with your understanding of our agreement, kindly indicate your approval and acceptance thereof in the space hereinbelow provided.

Yours very truly,

Warner Bros. Pictures, Inc.

/s/ By R. J. Obringer,  
Assistant Secretary

Approved and Accepted:

Norma Productions, Inc.

/s/ By Harold Hecht, Its Pres.

4. It is agreed that the principal members of the cast of said photoplay (including the stars or co-stars who may appear therein) and the roles to be portrayed by said members of the cast, the selection of the director to direct said photoplay, and the final editing and scoring of said photoplay shall all be subject to the written approval of Warner, the services of the aforesaid members of the cast and the director of said photoplay to be engaged and employed by Producer. In this connection, it is agreed that the said Burt Lancaster is hereby approved of by Warner to portray the star or leading male role in the photoplay to be produced hereunder. In this connection, Warner agrees that, upon the condition that the said Burt Lancaster shall portray the star or leading male role in said photo-

## Plaintiff's Exhibit No. 7—(Continued)

play, and upon the further condition that Producer shall furnish Warner with evidence that the said Burt Lancaster and the supervisor of production have been fully compensated for their services in said photoplay, then and in that event, while the Producer may charge as a part of the direct cost of said photoplay the sum of One Hundred Seventy-five Thousand Dollars (\$175,000), the Producer need not make any accounting to Warner for said sum of One Hundred Seventy-five Thousand Dollars (\$175,000), which said sum shall be deemed the total cost for the services of the said Burt Lancaster and the said supervisor of production and for Producer's so-called overhead charge to the direct cost of said photoplay; provided, however, if Harold Hecht does not supervise the production of said photoplay said sum of One Hundred Seventy-five Thousand Dollars (\$175,000) shall be reduced by the amount, if any, the permitted compensation for such supervisor, as determined pursuant to the next sentence, is less than Twenty-five Thousand Dollars (\$25,000). It is agreed that Mr. Harold Hecht shall be deemed approved of as the supervisor of production of the photoplay to be produced hereunder; provided, however, should any person other than the said Harold Hecht be engaged by Producer to act as supervisor of production of said photoplay, such other supervisor of production and the compensation to be paid for his services shall be subject to the approval of Warner, it being the intent that the sum of Twenty-five

## Plaintiff's Exhibit No. 7—(Continued)

Thousand Dollars (\$25,000) allowed for the compensation of a supervisor of production, as referred to in paragraph 7 hereof, shall apply only to the said Harold Hecht.

In this connection, the Producer hereby represents and warrants to Warner that a valid and subsisting copyright shall exist in any copyrighted literary property that Producer may use as the basis of said photoplay, and, whether or not said literary property is copyrighted, Producer will own and be vested with, or be in a position to acquire, all necessary rights in and to said literary property and the copyright thereof, if copyrighted, in order to produce a photoplay based thereon, with and/or without sound synchronized therewith, and to produce, reproduce and transmit the same by radio, television and all other devices which are now, or may hereafter be, used in connection with the production and/or exhibition and/or transmission of any present or future kind of motion picture productions.

The Producer further represents and warrants that in its employment of any writers engaged by Producer to write and develop the screen play based upon the literary property used as the basis of the photoplay produced hereunder, it will secure from any and all such writers a full and complete assignment of all rights in said screen play. In this connection, the parties hereto agree that the original story and screen play shall be included in the budget at a sum of Twenty-seven Thousand Six

## Plaintiff's Exhibit No. 7—(Continued)

Hundred Dollars (\$27,600.00), notwithstanding the fact that the cost thereof to Producer may have been in excess of such sum.

Producer further represents and warrants that it now has, or will obtain and have, a binding and enforceable agreement with Mr. Burt Lancaster, pursuant to which it shall have the right to use the services of the said Burt Lancaster to portray the leading male role in the photoplay to be produced hereunder, and Producer agrees that the said Burt Lancaster will render his services as an actor, portraying the leading male role, in said photoplay.

The Producer further represents, warrants and agrees that it will not, without the written consent of Warner being first had and obtained, employ any person whomsoever in connection with the production of said photoplay, or acquire from any person, firm, agency or corporation any story or literary property used as the basis of the photoplay to be produced hereunder, who, as consideration for services rendered in connection with the production of said photoplay or for rights granted in and to any said story or literary property used as the basis thereof, shall have any participating interest of any nature whatsoever in the proceeds or interest to be derived by Warner and/or Distributor from the rental and distribution of said photoplay.

5. The Producer hereby further represents, warrants and agrees as follows: (a) that Producer has the right to enter into this agreement and to grant, transfer and assign to Warner all of the rights and

## Plaintiff's Exhibit No. 7—(Continued)

licenses herein contained, and that there are not, and will not be, outstanding any claims, liens, encumbrances or rights of any nature against, or in or to, said photoplay or any part thereof, which can or will impair or interfere with the rights or licenses herein granted to Warner; (b) that neither said photoplay or any parts thereof (including the sound synchronized therewith) nor the exercise by any authorized party of any right granted to Warner hereunder will violate or infringe upon the trade-mark, trade name, copyright, patent, literary, dramatic, music, artistic, personal, private, civil or property right, or right of privacy, or any other right of any person, or constitute a libel or slander of any person, and that said photoplay will not contain any unlawful material; and (c) that Producer has not sold, assigned, transferred or conveyed, and will not sell, assign, transfer or convey, to any party any right, title or interest in or to said photoplay, or any part thereof, or the dramatic or literary property upon which said photoplay is based, and during the period of Warner's exclusive distribution license granted herein will not, and will not authorize any other person to, produce, distribute or exhibit any photoplay based, in whole or in part, upon such dramatic or literary property, and will not, and will not authorize any other person to, exercise any right to take any action which might tend to derogate from or compete with the rights herein granted or agreed to be granted to Warner. Notwithstanding anything to the contrary



## Plaintiff's Exhibit No. 7—(Continued)

above in this paragraph 5 set forth, it is expressly understood and agreed that nothing herein contained shall be deemed to limit or restrict Producer's right to sell, assign, pledge or hypothecate Producer's interest, in whole or in part, in the proceeds to be derived by Producer from said photoplay, as in this agreement provided for, subject to the condition, however, that all and/or any such assignee or transferee shall join, at their own cost and expense (and give Warner written evidence thereof), in the appointment of not more than three (3) representatives for the purpose of exercising any right granted Producer under the provisions of subdivision (g) of paragraph 11 hereof to examine the books and records of Warner.

The Producer, at its own expense, hereby agrees to indemnify Warner, its assignees and licensees, and the officers, employees and agents of each of them, against, and hold them harmless from, any and all loss, damage, liability or expense, including attorney's fees, resulting from any breach of any of the warranties of Producer herein contained. If any action against Warner and/or any such assignee or licensee and/or any officers, employees or agents of any of them shall allege facts which would constitute a breach of any such warranty or shall be based on or constitute a claim for damages of any kind resulting from any matter or thing connected with the production of said photoplay caused by or within the control of Producer, Warner may, at Producer's expense, be represented by counsel

## Plaintiff's Exhibit No. 7—(Continued)

retained by Warner or (if Warner so elects) by counsel retained by Producer, and may set off an amount equal to any obligation of Producer to Warner under this paragraph against any amounts payable by Warner to Producer under this agreement. Warner shall give Producer prompt written notice of the institution of any action or the making of any claim alleging a breach of warranty hereunder and Producer shall have the right to be represented by its own counsel in any such matter at its own expense. Each of the parties, however, agree to consult with the other in the selection of counsel so that expense of counsel may be minimized.

(a) If any person shall make any claim against Warner and/or its Distributor and/or any licensees of either of them involving any of the warranties made by Producer hereunder, and if any such claim or action shall appear to Warner to have such merit as to constitute a reasonable threat of damage, cost or loss, then Warner may thereafter withhold from any moneys payable to Producer under subdivision (i) of paragraph 11 of this agreement such amount as Warner may, in good faith, deem reasonably necessary or desirable for the purpose of protecting Warner and/or the Distributor and/or any licensees of either of them against any damages (including attorney's fees and expenses) which may be suffered as a result of said claim. Said money shall be held by Warner in a separate account and shall not be mingled with its general funds. It is agreed that Warner shall have the

## Plaintiff's Exhibit No. 7—(Continued)

right, in good faith, to settle and pay any such claim which, in Warner's judgment, is of sufficient merit to constitute a reasonable probability of ultimate loss, cost, damage or expense, but in this connection Warner agrees to give due consideration to the views and opinions of Producer in the premises prior to making any such settlement. After the settlement of any such claim or after the final judicial determination of any such suit or proceeding involving such claim, said moneys so held by Warner shall be used for the purpose of paying to Warner and/or its Distributor the moneys, if any, due Warner or its Distributor pursuant to the provisions of this paragraph, or of paying any judgment or settlement with respect to such claim, suit or proceedings, and the balance, if any, shall be paid to the Producer. Nothing contained above in this paragraph shall be construed as a limitation of the liability of the Producer for breach of warranty, as above in this paragraph set forth.

(b) In the event any person shall make any claim against Warner, its Distributor and/or any licensees of either of them or against the Producer, which claim does not involve a breach of warranty by Producer or a claim for damages of any kind resulting from any matter or thing connected with the production of the said photoplay but does involve a claim for damages resulting from any act by Warner and/or Distributor which is a breach of its or their legal or contractual obligations in connection with the distribution or exploitation of

## Plaintiff's Exhibit No. 7—(Continued)

said photoplay, then, and in that event, the liability for such acts by Warner and/or Distributor shall be solely the liability of Warner and/or Distributor.

(c) In the event any person shall make any claim against Warner, its Distributor and/or any licensees of either of them or against the Producer, which claim, in Warner's judgment, is of sufficient merit to constitute a reasonable probability of ultimate loss, cost, damage or expense, and which is not the separate liability of either party under the foregoing provisions of this paragraph, any damages (including attorney's fees and expenses) suffered by Warner and/or its Distributor or suffered by the Producer shall be treated as if such damages were an item of cost of distributing said photoplay. In the event any person makes such claim, Warner or its Distributor may thereafter withhold from the gross receipts derived from said photoplay such amount thereof as Warner or its Distributor may, in good faith, deem reasonably necessary or desirable for the purpose of protecting Warner and/or its Distributor or Producer against any damages or expenses which may be suffered as a result thereof. Warner or its Distributor shall keep such funds in a separate account and they shall not be mingled with its general funds. It is agreed that Warner shall have the right to settle and pay any such claim which, in Warner's judgment, is of sufficient merit to constitute a reasonable probability of ultimate loss, cost, damage or expense, but in this connection Warner agrees to give due consideration

## Plaintiff's Exhibit No. 7—(Continued)

to the views and opinions of Producer in the premises prior to making any such settlement. After the settlement of any such claim or after the final judicial determination of any suit or proceeding involving said claim, Warner or its Distributor will use said moneys so withheld for the purpose of paying any judgment or settlement with respect to such claim, suit or proceeding, and the balance of such funds so withheld, if any, shall be accounted for as gross receipts hereunder.

6. With respect to the photoplay to be produced hereunder, the Producer agrees, not later than thirty-five (35) days prior to the commencement of principal photography of said photoplay, to deliver to Warner a copy of the final screen play upon which such proposed photoplay will be based.

7. Producer further agrees, not later than thirty (30) days prior to the date Producer commences the principal photography of said photoplay, to submit to Warner a budget which shall indicate the anticipated direct cost of production of said photoplay and the facilities required by Producer in order to produce the same. Such budget shall be in the general form of, and shall contain the general detail with respect to direct cost of production included in, budgets prepared by Warner for its own use, copy of such budget form being attached hereto and marked "Exhibit 1". Such budget shall include all anticipated direct costs of production, including, but not limited to, the cost of acquisition and development of the dramatic or

## Plaintiff's Exhibit No. 7—(Continued)

literary property and the screen play to be used as the basis of said photoplay, as well as the cost of all other facilities contemplated in connection with the production thereof. As an item of direct cost of producing said photoplay, the Producer shall be entitled to include in said budget the sum of One Hundred Seventy-five Thousand Dollars (\$175,000), which sum shall represent the aggregate compensation to be paid the said Burt Lancaster and the said Harold Hecht and any and all so-called Producer's overhead. In this connection, however, it is agreed that should the said Burt Lancaster, for reasons beyond the control of Producer, not portray the star or leading male role in said photoplay, then and in that event, as an item of direct cost of said photoplay, the Producer shall be entitled to include in the budget therefor the sum of Twenty-five Thousand Dollars (\$25,000) for the services of the said Harold Hecht and for Producer's so-called overhead, and the compensation to be paid such other male star to appear in said photoplay shall be subject to the approval of Warner and, when so approved, shall be included by Producer as an item of direct cost of production of said photoplay. Except as specifically provided for above, Producer shall not be entitled to charge any so-called overhead to the direct cost, or otherwise, of the photoplay produced hereunder. The Producer agrees that when said budget is submitted to Warner, as herein provided for, the total direct cost of said photoplay, as set forth in said budget,

## Plaintiff's Exhibit No. 7—(Continued)

shall not exceed the sum of One Million One Hundred Thousand Dollars (\$100,100,000). Should said budget, when submitted to Warner by Producer, exceed the aforesaid sum with respect to the direct cost thereof, the Producer agrees, in the absence of Producer's securing Warner's written approval of any excess sum, to make such changes and revisions in the screen play contemplated to be used for said photoplay so that the budget of said photoplay shall, with respect to the total direct cost of production thereof, not exceed the limitation of direct cost aforesaid.

It is agreed that should the Producer, prior to the time that production of said photoplay is completed, expend in excess of the budgeted direct cost of production thereof, then and in that event it is agreed that Warner shall advance such additional sum, by way of credits or studio facilities, as is required to complete the production of said photoplay. It is further agreed, however, that should Producer, prior to the time that production of said photoplay is completed, expend more than fifteen per cent (15%) in excess of the budgeted direct cost of said photoplay, then and in that event Warner shall forthwith have full right or option to elect whether Warner shall assume control of production of said photoplay in place and instead of the Producer or whether Producer shall retain its control of production thereof. No such assumption of control of production by Warner under the provisions of this paragraph 7 or under the pro-

## Plaintiff's Exhibit No. 7—(Continued)

visions of paragraph 12 hereof shall allow the Producer to permit any of its employees then assigned to said photoplay to discontinue the rendition of their services in connection with the production thereof until completion of their services in said photoplay, unless consented to by Warner. No such assumption of control of production by Warner shall in any way permit Warner to abrogate any contract entered into between the Producer and any of its employees engaged in the production of said photoplay or to replace any of such employees so long as said employees shall not be in default under the terms of their employment with Producer. In the event Warner furnishes additional financing and/or facilities to complete the production of said photoplay as above referred to, and whether or not Warner exercises its right to assume production control, as aforesaid, all such additional financing and facilities furnished by Warner shall be deemed financing and advances made by Warner within the purview of subdivision (V) of paragraph 11 (a) hereof and shall be recouped by Warner from the gross receipts of said photoplay, as in said paragraph 11 (a) hereof provided for. In no event shall the Producer be deemed to have breached this agreement nor to have prejudiced its interests in the proceeds derived from the photoplay hereunder, as provided for in subdivision (i) of paragraph 11 hereof, in the event it shall have expended in excess of the total budgeted direct cost of the photoplay to be produced



## Plaintiff's Exhibit No. 7—(Continued)

hereunder, regardless of the amount of such excess.

It is agreed that when Warner's overhead charge to the direct cost of said photoplay, as hereinafter in the next succeeding paragraph hereof provided for, shall have been finally determined, Warner shall deduct therefrom, and shall not be permitted to recoup from the gross receipts of said photoplay under the provisions of paragraph 11 hereof, a sum equivalent to Fifty Thousand Dollars (\$50,000) of its said overhead charge, and the term "cost of production", as referred to in sub-paragraph (II) of subdivision (b) of paragraph 11 hereof shall only be deemed to include the general overhead charge made by Warner to the direct cost of said photoplay reduced by said sum of Fifty Thousand Dollars (\$50,000).

It is further agreed that, when the total direct cost of producing said photoplay has been finally determined, Warner shall be entitled to charge thereto, for facilities furnished Producer hereunder and not included in the direct cost of said photoplay, that proportionate share of the general overhead of Warner's Production Department attributable to said photoplay, in accordance with Warner's accounting system and practice from time to time established for and at the studio of Warner; provided, however, that the proportionate share of the general overhead shall not be computed on the basis of the direct cost of said photoplay but on the basis of the direct cost of said photoplay plus Fifty Thousand Dollars (\$50,000) (it being agreed

## Plaintiff's Exhibit No. 7—(Continued)

in this connection that while said sum of \$50,000 shall be added for the purpose of computing the proportionate share of the general overhead, nothing contained in this agreement shall entitle Warner to recoup said sum of \$50,000 as part of the cost of production). It is understood that, under the system of accounting above mentioned, part of such general overhead is proportionately charged against each photoplay on the basis of the actual or direct cost of producing such photoplay in relation to the total actual or direct cost of producing all photoplays of the same type and class produced during the same fiscal period to which overhead is charged. As an example, if the actual or direct cost of production of said photoplay is one-tenth (1/10th) of the actual or direct cost of producing all photoplays produced during the same fiscal period, then one-tenth (1/10th) of such overhead shall be charged to the photoplay produced hereunder. Except as hereinabove in this paragraph 7 referred to, no charge shall be included in said budget which shall constitute a so-called overhead charge on the part of Producer. Warner further agrees that the method and basis of its general overhead charge to the photoplay produced hereunder and, as well, the items, services or facilities included in said overhead, as aforesaid, shall not be changed with respect to the photoplay produced hereunder. Producer further agrees to make every effort possible, in connection with the writing and development of the screen play to be used as the basis of said photoplay, so that said screen play, when fully

## Plaintiff's Exhibit No. 7—(Continued)

and finally written and prepared, shall not exceed one hundred thirty (130) pages in length, and that the principal photography of said photoplay, including all montages and/or so-called process shots, shall not require more than a period of fifty-five (55) production days.

Notwithstanding anything elsewhere to the contrary in this agreement set forth, it is understood that Producer shall not be deemed in default hereunder should Producer be unable to produce and deliver, or to commence the production of, the photoplay contemplated hereunder, as in paragraph 3 hereof referred to, in the event production of said photoplay is delayed due to events beyond the control of Producer, such as, but not limited to, delays resulting from the happening of any fire, casualty, strike, unavoidable accident, act of God, war or epidemic, the illness of any principal member of the cast of said photoplay, or the enactment of any municipal, county, state or federal ordinance or law, or the issuance of any executive or judicial order, whether municipal, county, state or federal, or by any other legally constituted authority which will prevent or materially hamper performance by Producer, or any other cause beyond the control of Producer. Moreover, it is agreed that Warner shall not be deemed in default hereunder or have any liability to Producer in the event Warner is unable to furnish Producer with facilities, as herein referred to, or is prevented from so doing due to the happening of any of the foregoing events or for other causes beyond the control of Warner.

## Plaintiff's Exhibit No. 7—(Continued)

8. It is agreed that the photoplay to be produced hereunder will be produced using the so-called Technicolor process. Accordingly, it is agreed that, when production of said photoplay is completed, the Producer shall deliver to Technicolor Motion Picture Corporation the negative of said photoplay and, as well, a final cut positive print thereof, including the sound track thereof, fully cut, titled, edited and scored, and all other component parts of said photoplay necessary for the purpose of obtaining therefrom positive prints for the purpose of distributing, exhibiting and exploiting said photoplay. The Producer further agrees, at the time of its delivery of the negative of said photoplay, as aforesaid, to deliver to Technicolor Motion Picture Corporation the negative of a trailer made by Producer and a final cut positive print of said trailer, including the necessary and required sound track thereof and narration thereof, if any, fully cut, titled, edited and scored, for the purpose of obtaining therefrom positive prints for the purpose of advertising and exploiting said photoplay. The cost of said trailer shall be paid for by Producer and shall be included in the direct cost of production of the photoplay produced hereunder.

The Producer further agrees that, during the production of said photoplay and immediately thereafter, it will take such number of "still photographs" of scenes from, and the cast of, the photoplay hereunder as are normally and reasonably

## Plaintiff's Exhibit No. 7—(Continued)

required for advertising and exploitation purposes, such stills to be publicity, scene, production, gallery, informal and news stills. Producer agrees to deliver the negatives and not less than six (6) positive prints of such photographs to Warner. Each photograph shall bear an appropriate title identifying it with the subject depicted. The cost of such photographs shall be paid by Producer and shall be included as a part of the direct cost of producing said photoplay. Any and all approvals that may be required in connection with Warner's and/or Distributor's use of said photographs will be secured by Producer and delivered to Warner at the time Producer delivers said photographs to Warner.

9. Warner agrees, from the commencement of production of said photoplay and thereafter for such time as is customary in the motion picture industry, to keep and maintain the negative of said photoplay and trailer, and positive prints and sound track thereof, insured in an adequate amount against fire, theft and other insurable risks, with the loss, if any, payable to Producer and Warner, as their respective interest may appear. The insurance to be secured and maintained by Warner, as aforesaid, shall be of such type and in such amount and at such rates as customarily secured in the motion picture industry by producers producing motion pictures of the type and quality of, and under circumstances and conditions substantially similar to those herein provided for the pro-

## Plaintiff's Exhibit No. 7—(Continued)

duction of, the photoplay contemplated hereunder. The cost of such insurance carried by Warner shall be deemed a direct distribution expense and shall be recouped in the same manner as other distribution fees and distribution expenses hereinafter in subdivision (a) of paragraph 11 provided for.

It is agreed, however, notwithstanding anything to the contrary above in this paragraph 9 set forth, that should there be any recovery on any aforesaid insurance policy issued on the negative of said photoplay or on any property thereof in connection with a loss which occurs prior to the completion of the production of said photoplay, the amount of such recovery shall be available for use in connection with the production of said photoplay.

10. Producer hereby grants to Warner, and Warner shall have and retain, during the period of distribution hereinafter referred to, the sole and exclusive right or license in all parts of the world to distribute, exhibit, advertise, publicize and exploit, and to license others to distribute, exhibit, advertise, publicize and exploit, the photoplay produced hereunder, reissues thereof and trailers thereof by any and all media now or hereafter known and in every manner whatsoever, including, but not limiting the generality of the foregoing, all possible rights with reference to the screen, stage, radio, television, book, story publishing, and all other rights of every kind whatsoever. Warner may exercise such rights itself, or by or through its subsidiaries or such other distributor or dis-

## Plaintiff's Exhibit No. 7—(Continued)

tributors (all hereinafter for convenience' sake sometimes referred to as "Distributor"), as Warner may select. Warner and/or the Distributor shall have the right, during the period of distribution hereinafter referred to, to release, and reissue and rerelease, said photoplay and trailer thereof in each country and territory of the world upon such dates as they consider advisable or desirable, as well as complete authority to distribute said photoplay and license the exhibition thereof in accordance with such sales methods, policies and terms as are current in their own business during the period of distribution of said photoplay, or in accordance with such sales methods, policies and terms as they may consider sound or desirable in their discretion.

It is agreed that the period of time during which Warner shall have the sole and exclusive right or license, in all parts of the world, to distribute, exhibit, advertise, publicize and exploit the photoplay produced hereunder, reissues thereof and trailers thereof, and license others to distribute, exhibit, advertise, publicize and exploit said photoplay, reissues thereof and trailers thereof, shall be for the period commencing with the date hereof and ending fifteen (15) years from the date of the first general release in the United States of said photoplay.

Without limiting the generality of the foregoing, Warner and/or the Distributor shall have the right to modify, amend, cancel, adjust and alter all agreements, exhibition licenses, sales methods and policies relative to the distribution, exhibition and

## Plaintiff's Exhibit No. 7—(Continued)

exploitation of said photoplay as they may deem proper or advisable; to adjust and increase or decrease the amount of any allowances to any exhibitors for advertising and exploitation whether or not included in any theretofore existing agreement or license; to license the distribution and exhibition of said photoplay upon percentage rentals or flat rentals or both and in block with other photoplays or separately as they shall deem proper or desirable, and in the event that Warner shall decide to reissue said photoplay, it shall have the right to reimburse itself for all expenses incurred in connection with the said reissues, and to account for the net proceeds thereof in the same manner and with the same deductions and charges as for the original issue thereof.

The parties hereto recognize that in certain countries and territories Warner or Distributor now license the exhibition of their photoplays on a basis whereby the licensees pay a total license fee for the right to exhibit photoplays, together with advertising accessories to be used in connection therewith, and such licenses do not specify what part of the total license fee is being paid for such advertising accessories. Consequently, it is agreed that Warner or the Distributor shall have the right to license the exhibition of said photoplay in such manner and the further right to allocate to the said advertising accessories the actual cost of said advertising accessories. The Producer shall have no interest whatsoever in the proceeds derived from the



## Plaintiff's Exhibit No. 7—(Continued)

sale or license or other distribution of so-called advertising accessories in any part of the world, and the total proceeds therefrom shall at all times belong to Warner or the Distributor.

Said photoplay shall be distributed in the United States and Canada and in such other territories and countries throughout the world as may be consistent with sound business policies of Warner and/or Distributor, and subject to the judgment of Warner and/or Distributor as to the likelihood that said photoplay can be profitably distributed in any country or territory; it being understood that in various countries and territories it may be inadvisable or may seem unprofitable to distribute said photoplay or to continue the distribution thereof after it has begun, and, therefore, Warner and/or Distributor, because of their experience and knowledge of the conditions in, and requirements of, the various countries and territories of the world, are hereby vested by the Producer with the absolute right, in its or their uncontrolled discretion, to determine in which countries and territories said photoplay shall be distributed, and in which countries and territories the distribution thereof may be discontinued after it has commenced. However, should Warner, in the exercise of the discretion in this paragraph given to it, not release the photoplay produced hereunder in any country other than the United States and Canada within a period of three (3) years following the first general release date of said photoplay in the United States or if,

## Plaintiff's Exhibit No. 7—(Continued)

during said three (3) year period, Warner and/or Distributor has not actually contracted for the exhibition of said photoplay in any such other country, then Producer may negotiate an agreement with others to distribute said photoplay in said other country or territory, and Warner will execute a distribution agreement with said other party for such country or territory upon the customary terms in the motion picture industry; provided, however, that Warner shall not be required to advance dollars or any other currency to such other party for negatives, positive prints, accessories, or for any other purpose, and further, that the entire net proceeds of such license or distribution agreement shall be payable to Warner from which Warner shall deduct and keep, as its own, a sum equivalent to fifteen per cent (15%) thereof as reimbursement for costs and expenses incurred by Warner in connection with any such distribution agreement, and the balance remaining of such proceeds shall be applied in the manner in this agreement provided for.

Warner and/or the Distributor may grant to distributors who are not subsidiaries or affiliates of Warner, in countries other than the United States and Canada, the right to distribute said photoplay for either a flat sum or license fee or for a part of the receipts derived by such other distributors from the distribution of said photoplay, or a combination of both; and in such event, with respect to such territories, the rights to which have been granted

## Plaintiff's Exhibit No. 7—(Continued)

to other distributors, only the net sums actually received by Warner or the Distributor in the United States in U. S. dollars from such other distributors shall be considered as a part of the gross receipts hereunder, and not the sums received by such other distributors from licensing the exhibition of said photoplay in theatres or other places of exhibition. Moreover, it is agreed that when Warner and/or Distributor grants to distributors, who are not subsidiaries or affiliates of Warner, in countries other than the United States and Canada, the right to distribute said photoplay, Warner and/or Distributor shall not be entitled to deduct, as a distribution fee from the net sums actually received by Warner and/or Distributor in the United States in U. S. dollars from such other distributors, a sum in excess of fifteen per cent (15%) of the net sums actually received by Warner and/or Distributor from any such transaction. It is further agreed that Warner and/or Distributor shall only be entitled to license the distribution and/or exhibition of the photoplay produced hereunder to such non-subsidiaries and/or non-affiliates, as aforesaid, upon the condition that it so licenses (during the period when the photoplay produced hereunder is being distributed) the distribution and/or exhibition of substantially all photoplays produced by Warner of comparable cost and quality. Also, nothing in this paragraph contained shall be interpreted or construed to mean that Warner and/or Distributor shall be entitled to make or deduct a double

## Plaintiff's Exhibit No. 7—(Continued)

distribution fee with respect to such non-subsidiary or non-affiliate distribution license.

11. (a) Out of all of the "gross receipts" (as hereinafter defined) derived from said photoplay, Warner or the Distributor shall retain the sums hereinafter set forth in this subdivision (a), and the balance of the said gross receipts remaining after such sums have been first deducted shall be apportioned and paid as hereinafter provided. The sums to be so first deducted and retained by Warner from said gross receipts are the following:

(I) 27½% of the gross receipts of said photoplay received and collected by Warner or the Distributor from all sources in the United States of America (including Alaska and Hawaii) and Canada (including Newfoundland).

(II) 32½% of the sums received and collected by Warner and/or Distributor for granting to theatres located in the United Kingdom of Great Britain and Northern Ireland, the Isle of Man, the Channel Islands and Eire licenses to exhibit said photoplay.

(III) That percentage of the gross receipts of said photoplay from all sources set after the name of each country or territory in Schedule A hereto attached and hereby made a part hereof, and for all other countries and territories not specified in subdivision (I) and (II) hereinabove and in said Schedule A attached hereto, 32½% of the gross receipts of the said photoplay received and collected by Warner or the Distributor; except that

## Plaintiff's Exhibit No. 7—(Continued)

the net sums in U. S. dollars actually received by Warner or the Distributor in the United States from non-affiliated and/or non-subsidiary distributors in territories and countries outside of the United States and Canada shall be considered as gross receipts.

(IV) The cost and expense of all negative and positive prints obtained for use in connection with said photoplay and trailer thereof, throughout the world, including cans, containers, packing and shipping, and all other expenses connected therewith; and Warner and/or the Distributor may manufacture or purchase as many negatives and positive prints, together with the other items listed in this sub-paragraph for use in connection with the said photoplay as it, in its discretion, may consider advisable or desirable.

(V) That part or portion of the "cost of production" (as hereinafter defined) advanced or provided by Warner by way of cash, studio facilities or credits, as in this agreement provided for, together with 4% interest thereon, as referred to in paragraph 2 hereof. No interest charge shall be made on the amount of Warner's overhead charge provided for in paragraph 7 hereof.

(VI) The amount of the loan, together with 4% interest thereon, made by Warner to Producer as provided for in paragraph 2 hereof.

(VII) All costs of advertising, publicizing and exploiting said photoplay by such means and to such extent as Warner or Distributor may, in its

## Plaintiff's Exhibit No. 7—(Continued)

uncontrolled discretion, deem desirable, including, but without limiting the generality of the foregoing, so-called "cooperative advertising", or other advertising engaged in as a joint undertaking with exhibitors whereby the distributor agrees to pay or is charged with a portion of the exhibitor's advertising. Where said photoplay is advertised with a group of other photoplays not produced under this agreement, Warner or Distributor may apportion the cost thereof to the photoplay produced hereunder on the basis of the space used for said photoplay, compared with the total space used, and for the position, prominence and emphasis given said photoplay in relation to other photoplays included in such space.

(VIII) All cost of preparing and delivering said photoplay for distribution in all parts of the world, including, but without limiting the generality of the foregoing, editing, titling, superimposing, dubbing and duping of negatives and positive prints for foreign use; all duties, import tariffs, cost of exchange transactions, censorship fees and other costs; license fees, taxes and other governmental impositions and fees of every nature which may be assessed against said photoplay, or the proceeds thereof, or against a group of photoplays, or the proceeds thereof, in which said photoplay may be included, except income, franchise and similar taxes assessed against the Distributor for the privilege of doing business; all expenses incurred in revising or adapting said photoplay to meet censorship or

## Plaintiff's Exhibit No. 7—(Continued)

other requirements in all countries, regardless of whether such revision or modification produces the desired result; all expenses incurred in the delivery of negatives and prints to all foreign countries.

(IX) The cost of checking attendance and receipts at any and all theatres where said photoplay may be exhibited on the basis of a percentage of the box office receipts.

(X) Royalties, if any, payable to manufacturers of sound recording and reproducing equipment and for the use of stories and music; copyrighting expenses and any and all other expenses in addition to those referred to herein, incurred by Warner or the Distributor in connection with licensing said photoplay for exhibition or for other uses of the photoplay and the story and music thereof; and dues or assessments to the Motion Picture Producers Association, or other associations or bodies.

(XI) All costs arising out of, and losses incurred as a result of, "quota" requirements or laws which may exist in any foreign country and costs arising out of losses incurred in the production and distribution of said photoplay made in any foreign country where Warner or the Distributor, as a matter of policy, considers that it can more profitably distribute American made photoplays distributed by it if, at the same time, it distributes photoplays produced in the country in which it is operating. The losses so incurred shall be determined in the same manner as such losses or costs are determined in such country with respect to photoplays pro-

## Plaintiff's Exhibit No. 7—(Continued)

duced by Warner and distributed in such country during the same period of time that the photoplay produced hereunder is distributed in such country.

(XII) Any and all reasonable and proper expenses not hereinbefore provided for and incurred by Warner or the Distributor in exploiting and turning to account the said photoplay; provided, however, that Warner or the Distributor shall not include the cost of the general services and the general facilities of the offices and personnel used in the distribution of said photoplay, but only facilities and personnel acquired specifically, or used exclusively, for the distribution of said photoplay (for an appreciable period of time) shall be charged hereunder in addition to the distribution fees and other charges provided for under subparagraphs (I) to (XI), both inclusive, of this paragraph 11 (a).

(b) (I) The term "gross receipts" (as used herein) of the photoplay produced hereunder shall be deemed to be the actual receipts of Warner and/or Distributor from the distribution of said photoplay in the United States of America, its territories and possessions, together with the actual U. S. dollars received in the United States from all other countries and territories of the world, including Canada; together with the actual U. S. dollar receipts of Warner and/or the Distributor from trafficking in and exploiting said photoplay, including the net income from radio, television, 10mm. prints, trailers, commercial advertising tieups, and other forms



## Plaintiff's Exhibit No. 7—(Continued)

of net income with respect to said photoplay, but excluding all income from lithographs and accessories. When any portion of foreign receipts shall be unremittable for any reason, such portion shall be disposed of as hereinafter in this agreement provided.

(II) The term "cost of production," as used in this agreement, shall be deemed to be not only the actual and direct cost of production of the photoplay produced hereunder in complete form, but also, in addition thereto, shall include the proportionate share of the general overhead of Warner's Production Department attributable (but which proportionate share of general overhead shall be computed not upon the basis of the direct cost of production but upon the basis of the direct cost of production plus \$50,000, as provided in paragraph 7 hereof) to the photoplay produced hereunder, as provided for in paragraph 7 hereof, from which, however, shall be deducted \$50,000.00, as also provided in said paragraph 7. The cost of producing a trailer for the photoplay produced hereunder shall be a part of, and shall be included in, the actual and direct cost of production of said photoplay. There shall not be included in "cost of production" any so-called overhead charge on the part of Producer, except as in paragraph 7 set forth.

The Producer agrees that, within three (3) months after the completion of photography of said photoplay, it will deliver to Warner a complete itemized statement of the actual or direct cost

## Plaintiff's Exhibit No. 7—(Continued)

of production of said photoplay, and thereafter Warner shall add thereto such items of actual or direct costs as it may have provided in cash, credits or facilities, and which shall not have been included in the statement so supplied by Producer, together with its general overhead charges, as in paragraph 7 hereof provided for. Such itemized statement of the actual or direct cost of production so delivered to Warner by the Producer, plus the additional direct charges of Warner and its general overhead charges, shall constitute the "cost of production" of said photoplay.

(c) Under no circumstances shall the receipts of any theatre, or other user of the photoplay or rights connected therewith, be considered a part of the gross receipts of the photoplay produced hereunder. Only the license fee or rental paid by such user shall be included as a part of such gross receipts.

(d) No part of the sums received for licensing exhibition or other rights in connection with said photoplay outside of the United States shall be included as a part of the gross receipts unless and until such sums shall have been actually received by Warner or the Distributor in the United States of America in United States dollars. Warner or the Distributor will use reasonable efforts to convert foreign exchange into dollars, for the purposes of this agreement, at such rates of exchange as it may be reasonably able to obtain, regardless of whether such rates of exchange are official, unoffi-

## Plaintiff's Exhibit No. 7—(Continued)

cial, or otherwise, and Warner shall not be responsible for any errors of judgment or otherwise in making any foreign exchange transactions at any time, but shall only be required to account, under this agreement for such dollars as it may actually obtain from transactions consummated by it. In the event that Warner or the Distributor cannot, because of laws or restrictions of the country in which such foreign currency is obtained, reasonably convert the same into United States dollars and transmit them into the United States, and in the event that such funds, had they otherwise been transmitted into the United States in United States dollars, would have become a part of the receipts payable to the Producer, then Warner agrees, at the written request of the Producer (provided it may legally do so, and subject to any and all limitations, restrictions, laws, rules and regulations which have been or may hereafter be enacted, adopted or prescribed by any foreign country), to deposit into a bank designated by the Producer, or pay to any other person or persons, such part of such foreign currency as would have been payable to the Producer hereunder. Such deposits or payments to or for the Producer shall constitute due remittance of such sums to the Producer, and Warner and the Distributor shall have no further interest therein or responsibility therefor.

(e) Warner or the Distributor shall have the unrestricted right to license said photoplay, or rights connected therewith, to any or all of the theatres

## Plaintiff's Exhibit No. 7—(Continued)

or other agencies in which Warner may have an interest, directly or indirectly, upon such terms and rentals as Warner shall deem fair and proper under the circumstances, even though such rentals or terms shall be lower or less advantageous than the rentals or terms obtainable for similar uses at other theatres or agencies in which Warner has no interest, or which are competing with theatres or other agencies in which Warner itself has an interest. Warner agrees, however, that the terms upon which the theatres in which it has an interest shall be licensed to exhibit said photoplay shall be approximately the same terms upon which it licenses other photoplays of similar box office appeal to such theatres.

(f) In the event that in the United States or Canada any distributor shall rent any theatre for the purpose of giving exhibitions of said photoplay on a "road-show" basis, as such term is understood in the motion picture industry, then and in such event the net profits or losses derived by the distributor as a result of such "roadshow" exhibitions shall be included in or deducted from the gross receipts hereunder. In arriving at such net profits or losses, the distributor shall have the right to deduct all legitimate expenses in connection with such exhibition, including rent, advertising, cost of operating the theatre, and all other reasonable and customary expenses incurred in connection with such "road-show" exhibition.

(g) Warner agrees that the distributors shall,

## Plaintiff's Exhibit No. 7—(Continued)

for a period of two (2) years from the general release of the photoplay produced hereunder, keep at their respective offices, throughout the world, complete books of account pertaining to the distribution of the photoplay produced hereunder by such offices, together with vouchers, records and accounts pertaining thereto, all of which shall be open, during reasonable business hours, for such two (2) year period, for inspection and copying by the Producer or its duly authorized agent, at the Producer's expense. The Producer may, under the same terms and conditions, and for the same period of time, also examine the general books of account, records and vouchers pertaining to the distribution of said photoplay which may be kept at Warner's home office in New York City. Notwithstanding the foregoing limitation of time, Warner agrees that Producer, at its sole cost and expense, shall have the right to examine all books and/or records pertaining to the distribution of the photoplay produced hereunder which may be kept and maintained by Warner and/or Distributors after the expiration of the aforesaid two (2) year period. Commencing sixty (60) days after the month of the general release of said photoplay, Warner shall render to the Producer summary statements of the receipts, expenditures and computations relating to said photoplay for the first calendar month of release and thereafter monthly, sixty (60) days after the end of each month, for the next succeeding eleven (11) months. For the

## Plaintiff's Exhibit No. 7—(Continued)

next three years statements shall be rendered quarterly and thereafter semi-annually so long as said photoplay may be distributed hereunder, except that such statements for foreign business shall be rendered thirty (30) days later than the statements for the United States and Canada. Statements may be delayed because of war, delays in transportation, or for other reasons beyond Warner's control, and Warner shall not be deemed in default hereunder in the event it is unable to render such reports for any country within the time limits herein specified. Any sums shown to be due and payable to the Producer by such statements shall be remitted to Producer simultaneously with the rendering of such statements. All notices, statements and accounting which Warner is required or may desire to give Producer in connection with this agreement shall be sufficient if given by addressing the same to Producer at 4000 West Olive Ave., Burbank, California, or at such other place as may be designated in writing by the Producer. All notices which the Producer is required or may desire to give Warner under or in connection with this agreement with respect to the production of said photoplay shall be sufficient if given by addressing the same to Warner, in care of its Legal Department, at 4000 West Olive Ave., Burbank, California, or at such other place as may be designated in writing by Warner. All notices which the Producer may be required or may desire to give Warner under or in connection with this agreement with respect to

## Plaintiff's Exhibit No. 7—(Continued)

the distribution and accounting of said photoplay shall be sufficient if given by addressing the same to Warner, in care of its Legal Department and a copy thereof to its Accounting Department, at its offices located at 321 West 44th Street, New York, N.Y., or at such other place as may be designated in writing by Warner.

(h) Warner or the Distributor shall have the full and complete right to release said photoplay upon such dates in such parts of the world as they deem desirable or advisable in their uncontrolled judgment and discretion; to license the distribution and/or exhibition of said photoplay, and in agreements licensing the said photoplay alone, or in agreements licensing said photoplay in block or together with other photoplays. It is understood by the parties hereto that in certain countries or territories Warner or the Distributor now license the distribution or exhibition of their photoplays on a basis whereby the licensee pays either a flat sum or percentage of the receipts, or both, for the right to exhibit a group of photoplays, and that such licenses do not specify what portion of such license payments shall be allocated to any one photoplay in such group; consequently, it is agreed that Warner or the Distributor shall have the right to license the distribution or exhibition of the photoplay produced hereunder in such manner, and in such event, Warner or the Distributor may, in its uncontrolled discretion, allocate to the photoplay produced hereunder such portion of said total li-

## Plaintiff's Exhibit No. 7—(Continued)

cense payments as it may deem proper under the circumstances, Warner agreeing, however, that such allocation shall be fair under the circumstances.

Notwithstanding the foregoing provisions of this subdivision (h), Warner agrees, upon the condition that Warner and/or Distributor can obtain a sufficient number of release prints and subject to any and all lawful restrictions and/or prohibitions, that said photoplay will be released in the United States on or before the expiration of a period of twelve (12) months from and after the date of delivery thereof to Technicolor Motion Picture Corporation, as aforesaid.

(i) After making the deductions set forth in subdivision (a) of this paragraph 11, all gross receipts, as herein defined, then remaining shall be used and applied by Warner and/or Distributor as follows:

All gross receipts then remaining shall be retained by Warner to the extent of fifty per cent (50%) thereof, and the remaining fifty per cent (50%) thereof shall be paid to the Producer at the time and in the manner herein provided. In all events, the payments and percentages provided for in this subdivision (i) shall be paid, retained or determined after all of the deductions in this agreement provided for shall have been first made from said gross receipts. Moreover, it is agreed that the photoplay to be produced hereunder shall in no way be considered, for the purpose of accounting the proceeds, if any, to Producer hereunder, a photoplay within the unit of three (3) photoplays to



## Plaintiff's Exhibit No. 7—(Continued)

be produced by Producer pursuant to an agreement being entered into concurrently herewith by and between Producer and Warner, and all proceeds payable to Producer hereunder shall be paid Producer without regard to profit or loss to said unit of three (3) photoplays.

12. In the event that there shall be a substantial default on the part of the Producer hereunder with respect to any of its obligations in connection with the production of said photoplay, and which default can reasonably be cured by Producer within a period of ten (10) days from the date thereof, and should Producer not cure such default within a period of ten (10) days after written notice from Warner so to do, or should such default be of the type that cannot reasonably be cured by Producer within said ten (10) day period and Producer does not, in good faith, take active steps within said ten (10) day period to commence to cure such default, then, in either of said events, Warner may, at its option, cancel and terminate all of its obligations hereunder with respect to providing any further financing by cash advances and/or credits and/or by way of furnishing studio facilities to the Producer, or otherwise, in connection with the production of said photoplay, and, upon the exercise by Warner of such right or option, Warner shall have the further continuing right or option to itself produce or complete the production of said photoplay, using any facilities and/or financing it desires without restriction or hindrance from Producer, and if production of said photoplay be so

## Plaintiff's Exhibit No. 7—(Continued)

completed and subsequently released by Warner, as in this agreement provided for, then all such advancements, financing, credits or studio facilities furnished by Warner to complete the production of said photoplay shall be deemed financing and advances made by Warner within the purview of subdivision (V) of paragraph 11 (a) hereof, and shall be recouped by Warner from the gross receipts of said photoplay as in said paragraph 11 (a) provided for.

13. Warner agrees to secure the copyright registrations of said photoplay and trailer thereof produced by Producer hereunder in the United States Copyright Office in the name of the Producer, and to advance the cost of such registration, and Warner may recoup such cost from the gross receipts of said photoplay pursuant to the provisions of subdivision (X) of paragraph 11 (a) hereof. It is agreed that the sole and exclusive right, title and interest in and to the copyright and renewal of copyright of said photoplay, the negative and positive prints thereof and trailer thereof, and all component parts thereof, except as herein provided for, shall, subject to Warner's and/or Distributor's exclusive right of distribution, exhibition and exploitation thereof and the liens and rights of Warner as in this agreement set forth, belong to the Producer. Warner further agrees that it will, upon the same terms and conditions aforesaid, duly procure copyrights for said photoplay and trailer thereof in the countries of North America, the

## Plaintiff's Exhibit No. 7—(Continued)

United Kingdom of Great Britain and Ireland and the countries included in the so-called Berne Convention and in such other countries throughout the world where copyrights are procurable. Neither Warner nor Distributor shall have any liability whatsoever to the Producer or to any other person if any defect or defects exist in any such copyrights.

As security for the repayment by Producer to Warner of any and all sums advanced by way of cash and/or studio facilities by Warner or Distributor under this agreement, Producer does hereby mortgage, pledge and hypothecate said photoplay and all of Producer's right, title and interest therein and does hereby grant Warner and/or Distributor the first and continuing lien upon said photoplay and the related rights and properties, and upon all of the Producer's right, title and interest therein, and upon the copyrights of said photoplay and of all of the related rights and properties, and upon all negative and positive prints, trims and cutouts of said photoplay and the sound track thereof, and upon anything and everything tangible and intangible purchased or acquired for use in collection with, or used in connection with, the production of said photoplay, and upon all of the gross receipts derived from said photoplay, and upon all of Producer's rights under this agreement. If at any time Warner and/or Distributor shall deem it necessary or advisable that any further instrument or instruments be executed and

## Plaintiff's Exhibit No. 7—(Continued)

delivered by Producer to establish more definitely or to evidence, maintain or defend any or all of the security rights or other rights given to Warner and/or Distributor as above set forth, Producer agrees from time to time, upon demand by Warner, to execute, acknowledge and deliver any such instrument or instruments in form satisfactory to Warner. In the event Warner is not repaid for all of its advances under this agreement, in accordance with the repayment provisions contained elsewhere in this agreement, then (in addition to any and all rights Warner or Distributor may have at law or in equity to enforce Producer's said obligation) Warner and/or Distributor shall have the right to foreclose the lien above mentioned in order to secure repayment of such advances.

The Producer understands that Warner has one or more music publishing houses affiliated with it or as subsidiaries, as the case may be, and, therefore, the Producer agrees that should any music or musical compositions be used in said photoplay, Warner, through such publishing affiliate or subsidiary as it may select, shall have, and is hereby given, the right or option to publish the same and to copyright any and all musical compositions in its own name or otherwise, as well as the right to sell copies, reproductions, recordings and transcriptions thereof, and to license others to use the same in public performances, radio broadcasting and/or otherwise as said publishing affiliate or subsidiary may in its uncontrolled discretion determine, and

## Plaintiff's Exhibit No. 7—(Continued)

to reproduce the same, as aforesaid, on terms and conditions not less favorable than comparable and bona fide terms that may be offered by music publishing houses not affiliated with Warner, or which may be usual in the industry; and Warner's net receipts from such music publishers shall be considered gross receipts hereunder.

It is further agreed that Warner, in obtaining copyrights in said photoplay and trailer thereof in the name of Producer, as hereinabove provided, is authorized to have noted on such copyright registrations that the same are subject to the terms and provisions of this agreement.

14. It is agreed that said photoplay and the trailer thereof, or either thereof, may, when distributed to the general public, bear at the beginning of the main title of all positive prints thereof the phrase "Warner Bros. Pictures, Inc. Presents", or such variation thereof and in such manner of presentation as Warner may determine upon, with such trade-mark on the main title of each said positive print and at the end thereof as Warner may adopt and use from time to time. It is further agreed that, in the paid advertising and publicity issued by or under the control of Warner and/or Distributor, Warner and/or Distributor shall have the right or option to indicate therein with appropriate language that Warner or its subsidiary is the distributor of said photoplay and/or that said photoplay is being presented or distributed by or through Warner or its distributing affiliate, and

## Plaintiff's Exhibit No. 7—(Continued)

to also place therein Warner's and/or Distributor's trade-mark as may be adopted and used from time to time.

15. The Producer shall use its best efforts to deliver to Warner, not later than thirty (30) days before the completion of principal photography of said photoplay, a complete statement containing the names of all persons to whom the Producer is required to give credit on the screen and in the paid advertising and paid publicity of said photoplay and the form and extent of such credit.

Warner agrees to comply with the provisions of any contracts of the Producer with writers, the director and principal members of the cast of said photoplay, and others, relating to the credit, and the form and extent of such credit, to be given them as evidenced by such statement; provided, however, Warner shall not be obligated to violate any agreement which it may have with any guild or association of employees in complying with the provisions of such statement. In this connection it is agreed that the credit to be accorded the Producer on the screen and in paid advertising and paid publicity of said photoplay shall be twenty-five per cent (25%) of the size type used to display the title of said photoplay. The credit to be accorded the supervisor of production of said photoplay on the screen and in paid advertising and paid publicity, as aforesaid, shall be given in the same manner, fashion and with the same prominence as that accorded by Warner to producers employed by it

## Plaintiff's Exhibit No. 7—(Continued)

and who are assigned to produce photoplays of comparable style, class and box office appeal as the photoplay produced hereunder. It is further agreed that no credit shall be accorded the supervisor of production of the photoplay produced hereunder in so-called "teaser" and/or special advertising, publicity and exploitation thereof, nor in any so-called "trailer" or other advertising on the screen in connection therewith.

If Warner shall comply with the statement given Warner by Producer as above provided for, and if any person claims that Warner should give him credit in connection with said photoplay or that Warner should cease to give him credit in connection therewith, Warner will notify the Producer in writing or by telegram of such demand. The Producer, within twenty-four (24) hours after the receipt of such notice, will notify Warner that it does or does not consent that Warner comply with the demand of such person. In the event the Producer consents that Warner comply with such demand, Warner will thereafter accord or refuse to accord, as the case may be, such credit in accordance with such demand. In this connection, Warner will recoup all expenses incurred in complying with such demand from any moneys otherwise payable to the Producer pursuant to this agreement. If, however, Warner shall have failed to comply with the statement of credits given Warner by the Producer as aforesaid, then any expenses to which Warner is put in according or deleting credit, as

## Plaintiff's Exhibit No. 7—(Continued)

the case may be, shall be at Warner's sole cost and expense.

Producer further agrees that Warner and/or Distributor may, consistent with Producer's contracts rights, use and display, and authorize others to use and display, the names, voices, and physical likenesses of the director and principal members of the cast of said photoplay in connection with the distribution, exhibition, advertising and exploitation thereof. Producer further agrees that, consistent with Producer's contract rights, Warner and/or Distributor shall have the sole and exclusive right, during the distribution period hereof, to broadcast, transmit and reproduce the sound synchronized with any said photoplay, or excerpts, summaries or dramatizations of such sound or of the literary material (including the basic story and/or screen play or parts thereof) upon which said photoplay is based, separately from the reproduction of said photoplay, including radio broadcasts with living actors and by so-called electrical transcriptions and/or by television for the purpose of advertising and exploiting said photoplay. Moreover, Warner and/or Distributor shall, consistent with Producer's contract rights, have the right to publish summaries of said basic story material and/or screen play and/or parts thereof upon which said photoplay is based up to 7500 words in length, for the purpose of advertising and exploiting said photoplay.

16. Warner and/or Distributor may recoup, from



## Plaintiff's Exhibit No. 7—(Continued)

the gross receipts and proceeds of said photoplay, any expenses incurred by Warner and/or Distributor in any action or proceedings filed to recover moneys due pursuant to any agreement relating to the distribution or exhibition of said photoplay; provided, however, that such action or proceeding has been one which Warner or Distributor has filed believing, in good faith, that it would recover at least a substantial portion of such money. In this connection, it is agreed that only net collections of any such action or proceedings, after deducting expenses, shall be included in the gross receipts and proceeds of said photoplay.

17. Warner or Distributor, or their licensees, may re-cut and re-edit said photoplay for release in any territory in order to conform to the requirements of censorship authorities in any such territory and in order to conform to the peculiar racial or political prejudices likely to be encountered in said territory.

Warner and/or Distributor, without the consent of the Producer, may change the title of said photoplay in connection with its distribution in foreign countries, if, in the judgment of Warner and/or Distributor, it is necessary or expedient so to do.

Warner and/or Distributor may reimburse itself for the cost and expense of re-cutting, re-editing and title changes from the gross receipts and proceeds of said photoplay, as herein provided for.

18. Limited to the period of distribution re-

## Plaintiff's Exhibit No. 7—(Continued)

ferred to in paragraph 10 hereof, Warner and/or Distributor may make or cause to be made, and/or authorize others to make, foreign language versions of said photoplay, including, but not limited to, dubbed versions, superimposed versions and synchronized versions, all without the consent of Producer. Warner and/or Distributor will advance, or obtain the advance of, any sums required in the making of such foreign versions and Warner or Distributor may reimburse itself for the cost of said versions from the gross receipts and proceeds of said photoplay pursuant to the provisions of subdivision (X) of paragraph 11 (a) hereof. Warner and/or Distributor may also grant to other persons the right to make foreign versions at the expense of the person making such versions and to distribute such foreign versions in specified foreign countries or territories, and the net percentages or net sums actually received by Warner and/or Distributor from persons making such foreign versions shall be deemed to be the gross receipts from such foreign countries or territories.

If any foreign versions are made, such foreign versions of said photoplay shall be deemed to be a part of said photoplay and shall be subject to the terms and conditions of this agreement.

19. Warner and/or Distributor may cause to be manufactured and distributed, in connection with the distribution and exhibition of said photoplay, advertising material (including lithographs, lobby displays and slides) such as is being used, and has

## Plaintiff's Exhibit No. 7—(Continued)

customarily been used, by Warner or Distributor in connection with photoplays of like character and merit heretofore distributed by them. Warner and/or Distributor, however, shall not charge, against the gross receipts and proceeds from said photoplay, any sums expended for the manufacture and distribution of such advertising material, but either Warner or Distributor, or their assignees and licensees, shall defray the cost thereof. All sums of money received by Warner or Distributor from the sale or other disposition of such salable advertising material shall belong to Warner and/or Distributor and shall not be accounted for as part of the gross receipts and proceeds from said photoplay.

20. The gross receipts and proceeds from said photoplay shall be received by Warner or Distributor for the purposes of this agreement. Warner or Distributor shall not, however, be obligated to segregate the gross receipts from said photoplay from its other funds.

21. In the event of the merger or consolidation of Warner or Producer with any other corporation or corporations, or the sale by either party of a major portion of its assets or its business and good will, this agreement may be assigned or transferred to such successor in interest as an asset of the parties so assigning upon such assignee assuming the assignor's obligation hereunder.

22. Warner or Distributor may, in the name of the Producer or otherwise, take such steps as may

## Plaintiff's Exhibit No. 7—(Continued)

seem appropriate to Warner or Distributor, by action at law or otherwise, to prevent any unauthorized exhibition or distribution of said photoplay or to prevent any infringement of the photoplay, or the copyrights thereof, or to prevent any impairment of, encumbrances on, or any infringement upon, the rights of the Producer or Warner pursuant to this agreement. Warner or Distributor shall have the right, in the name of Producer or otherwise, to execute, acknowledge, verify and deliver all instruments pertaining to any action or special proceeding brought for any of said purposes.

All costs, expenses (including attorney's fees), loss, damage or liability suffered or incurred in connection with any such steps taken by Warner or Distributor shall be charged against the gross receipts and proceeds of said photoplay and shall be paid therefrom as a part of the expense of distributing said photoplay pursuant to subdivision (XII) of paragraph 11 (a) hereof, and any recovery, less costs and expenses thereof, shall be included in gross receipts; provided, however, Warner shall not be entitled to deduct any distribution fee in this agreement referred to from the amount of any recovery included in gross receipts, as herein referred to.

23. If a petition for involuntary bankruptcy shall be filed against the Producer and shall not be dismissed within thirty (30) days after the filing thereof, or if the Producer shall be adjudi-

## Plaintiff's Exhibit No. 7—(Continued)

cated a bankruptcy on its voluntary petition; or if a receiver of the assets of the business of the Producer shall be appointed in any bankruptcy or equity proceeding and if any such receivership shall continue for more than ten (10) days; or if any attachment or execution shall be levied upon any negative, sound records or positive prints of said photoplay, or upon any property used or intended to be used therein or in connection with the production thereof, and shall remain in effect for more than ten (10) days; or if the Producer shall make a voluntary assignment for the benefit of its creditors; then such event shall, at Warner's option, be deemed to constitute an act of default by the Producer under the terms and conditions of this agreement, and such default shall be governed by the provisions of paragraph 12 hereof.

24. No waiver by either party hereto of any breach of any covenant of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant or provision. The exercise of any option granted to either party hereunder shall not operate as a waiver of any default or breach on the part of the other party hereto. Each and all of the several rights, remedies and options of either party hereto under or contained in or by reason of this agreement shall be construed as cumulative and no one of them as exclusive of the others, or of any right or priority allowed by law. Any option or options or rights of election herein granted to either Warner or Pro-

## Plaintiff's Exhibit No. 7—(Continued)

ducer may be exercised, unless herein otherwise specifically provided, by oral or written notice delivered by any means of communication whatsoever.

25. Subject to Producer's not desiring to keep and maintain a so-called film library, Producer hereby grants to Warner the right to use all cut-outs and trims and, as well, such portions as Warner may desire of the photoplay produced hereunder, as finally edited by Producer, for the purpose of making the same a part of Warner's film library and also the right to use and grant others the right to use the same in other photoplays; but nothing herein contained shall be deemed to mean that Producer grants Warner such rights with respect to such cut-outs, trims and portions of the photoplay produced hereunder involving persons, such as actors, actresses, directors and others, with respect to whom Producer does not have the right to grant such rights or prior to any time Producer shall have such rights. Warner shall not be obligated to pay Producer for any of the foregoing rights or to account to Producer for any rental value from the proceeds received by Warner from the exercise of any said rights.

26. This agreement shall be construed and interpreted pursuant to the laws of the State of California with respect to all matters relating to the production of said photoplay in the United States; and pursuant to the laws of the State of New York with respect to all matters relating to the distribution of said photoplay throughout the world.

## Plaintiff's Exhibit No. 7—(Continued)

27. Nothing in this agreement contained shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this agreement and any material statute, law or ordinance contrary to which the parties hereto have no legal right to contract, the latter shall prevail, but in such event the provision of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within the legal requirements.

28. Warner and/or Distributor may make such deductions, withholdings or payments from the gross receipts of said photoplay with respect to taxes and similar charges as they believe, in good faith, to be required by law, and if the Producer desires to contest any such tax or other charge it will do so directly with the governmental authority involved.

29. Nothing herein contained shall constitute a partnership between, or joint venture by, the parties hereto or constitute either party the agent of the other. Neither party shall hold itself out contrary to the terms of this paragraph and neither party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. This agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party, whether referred to herein or not.

30. Warner agrees, upon the expiration of the distribution period of the photoplay produced here-

## Plaintiff's Exhibit No. 7—(Continued)

under and as referred to in paragraph 10 hereof, to deliver to the Producer the negative of said photoplay which is in its possession, and to also deliver to the Producer all positive prints thereof in its or its Distributor's possession, or, in lieu thereof, to furnish the Producer with evidence of the loss, obsolescence or destruction thereof. Warner will also deliver to the Producer any advertising material relating to said photoplay upon the condition that the Producer shall pay Warner the cost of any such advertising material. It is agreed that Warner shall be authorized to retain one (1) positive print of said photoplay for laboratory purposes. In this connection, it is agreed that, at the time of the delivery by Warner to Producer of the negative and positive prints and advertising material of said photoplay, it shall be optional with Warner as to whether or not the name of Warner, as well as any trade-mark or shield adopted and used thereon or therein by Warner, shall be continued to be used by Producer, Warner to make known its election to Producer in writing within fifteen (15) days after Producer has requested Warner in writing to make such election, and in this connection Producer agrees that it will, within fifteen (15) days after Producer's receipt of said negative and positive prints and advertising material, request Warner to make its election. After the expiration of the distribution period above referred to, Producer shall continue to be the owner of all rights in and to the photoplay hereunder and the story and/or



Plaintiff's Exhibit No. 7—(Continued)

literary property upon which it shall be based, and all other rights therein and thereto, without any interest of any nature whatsoever therein or thereto being claimed or asserted by Warner. Warner agrees to execute any and all documents which may be deemed reasonably necessary to effectuate the foregoing.

31. This agreement supersedes and cancels all other and former agreements and understandings in the premises between the parties hereto as of the date hereof.

32. It is specifically agreed that this contract contains all of the terms, conditions and promises of the parties hereto in the premises and that no modification or waiver thereof or of any provision thereof shall be valid or binding unless in writing executed by both parties hereto.

In witness whereof, the parties hereto have executed this agreement by their respective officers, hereunto duly authorized, the day and year first above written.

WARNER BROS. PICTURES, INC.

/s/ By C. H. WILDER,  
Assistant Treasurer

NORMA PRODUCTIONS, INC.

/s/ By HAROLD HECHT,  
Its President.

Schedule A

Australia and surrounding areas: 50%.

Mexico: 50%.

## Plaintiff's Exhibit No. 7—(Continued)

New Zealand, Fiji and So. Pacific Isles: 50%.

Sweden: 40%.

Argentina and Paraguay 50%.

Brazil: 40%.

Chile: 45%.

Cuba: 45%.

Egypt, Syria, Palestine, Persia, Iraq, Anglo-Egyptian Sudan, Eritrea and Abyssinia, Cyprus: 35%.

Finland: 35%.

India, Burma, Ceylon and Afghanistan: 35%.

Panama and Canal Zone, Costa Rica, Guatemala, Nicaragua, Salvador, Honduras, and Br. Honduras: 35%.

Peru and Bolivia: 40%.

Puerto Rico and So. Domingo: 40%.

Trinidad and Tobago, Barbados, Br. and D. Guiana, Isle of St. Vincent, Antigua, Montsoret, Dominica, St. Kitts and St. Lucia: 40%.

Uruguay: 45%.

Switzerland: 40%.

Philippines: 35%.

Colombia: 40%.

Ecuador: 45%.

China: 50%.

Hong Kong: 35%.

Siam: 50%.

Singapore: 40%.

Belgium: 35%.

France: 45%.

South Africa: 35%.

Spain: 40%.

Plaintiff's Exhibit No. 7—(Continued)

“Exhibit No. 1”

[Printer's Note: Budget form not filled out.]

“Exhibit No. 2”

The undersigned, Norma Productions, Inc., hereby acknowledges receipt from Warner Bros. Pictures, Inc., in connection with the production of its photoplay tentatively entitled “The Hawk and the Arrow” the sum of.....Dollars (\$.....) as a part of the loan agreed to be made the undersigned by the said Warner Bros. Pictures, Inc. in connection with the production of the aforesaid photoplay, pursuant to that certain agreement between the undersigned and the said Warner Bros. Pictures, Inc. dated..... The undersigned further acknowledges that the said Warner Bros. Pictures, Inc. is entitled to be repaid said sum of.....Dollars (\$.....), together with interest thereon at the rate of four per cent (4%) per annum from the date hereof until paid, all in accordance with the terms and conditions in said agreement of.....set forth. The above referred to sum, together with interest thereon, shall be paid Warner Bros. Pictures, Inc. only from the proceeds of the photoplay produced under said agreement of....., and particularly as provided for in paragraph 11 thereof.

Dated this.....day of.....

Norma Productions, Inc.

By ....., Its

[Endorsed]: Marked for Ident. July 22, 1953.

## PLAINTIFF'S EXHIBIT No. 8

[Letterhead of Morris L. Marcus]

Warner Brothers Pictures, Inc. Oct. 20, 1950  
and Warner Brothers Studios  
4000 West Olive, Burbank, California

Re: Jules Garrison vs. Warner Brothers Pic-  
tures, Inc. and Warner Brothers Studios,  
et al.

Dear Sirs:

In the above matter, I represent Mr. Jules Gar-  
rison who advises me that he has accepted your  
offer of \$1,000,000 for proof and has given proof  
that Burt Lancaster did not do all of the stunts  
he is shown doing in the picture "The Flame and  
the Arrow". Mr. Garrison has already notified your  
company and also your attorneys of this fact.

Accordingly, I would appreciate your communi-  
cating with me on or before Tuesday, October 24,  
1950 concerning payment of this claim.

Yours very truly,

MLM:f            /s/ MORRIS L. MARCUS

[Penciled notation]: 10/26 I phoned Marcus—  
(1) no offer made; (2) Offer, if any, withdrawn;  
(3) Lancaster did the stunts.

[Endorsed]: Filed July 22, 1953.

PLAINTIFF'S EXHIBIT No. 9

AFFIDAVIT

County of Los Angeles,  
State of California—ss.

The undersigned affiants, being duly sworn, depose and state:

That the affiants take this means of verifying that the stunts listed below were done by Burt Lancaster alone, without the aid of trick photography or trick means.

That the affiants are all recognized Hollywood stunt men employed in the production of motion pictures.

That the affiants realize that the public believes that stunt men and not the stars execute the stunts seen in motion pictures.

But, that the affiants were present at Warner Bros. studio on the set of "The Flame and the Arrow" at all times during the production of the Technicolor picture when Burt Lancaster personally performed the following stunts, which in the affiants' opinion have never been performed before by any star in any one picture:

(1) Executed somersaults and pirouettes from horizontal bar to horizontal bar (six in all) 20 feet above the ground, with swing up from one bar to the other, upstanding on one foot. From last bar he dropped ten feet to a balcony, where Nick Cravat approached with pole on which he slid to the ground for a grand finale.

(2) Climbed up a twenty-five foot pole balanced

Plaintiff's Exhibit No. 9—(Continued)  
 on the forehead of Nick Cravat, to finish off in a performance resembling a flag, and so-called, professionally, a "flag."

(3) From thirty-five feet in the air, walked across a pole in tight-wire fashion from ledge to ledge, with no net underneath.

(4) Climbed a thirty foot rope, hand over hand.

(5) Received Nick Cravat in his arms from high jump and tossed Cravat away in a somersault in swing time.

(6) Executed a "three men high" in the company of Nick Cravat and one, with finish off including a lean to ground, fall and then a roll over.

(7) Various and sundry riding and action stunts in battle scenes, and combat encounters, as well as hand to hand fight and sword duel with Robert Douglas.

/s/ Louis G. Tomei,  
 /s/ Sailor Billy Vincent,  
 /s/ Mickey McCardle,  
 /s/ Boyd Red Morgan,  
 /s/ Allen Wyatt,  
 /s/ Glenn Thompson,  
 /s/ Charles F. Horvath,  
 /s/ Paul Baxley,  
 /s/ Joe P. Smith,  
 /s/ Allen Pomeroy.

I, Allen Pomeroy, certify that the foregoing instrument was signed in my presence by each of the

Plaintiff's Exhibit No. 9—(Continued)

above signatories, and I further certify that such signatories are all known to me to be the persons whose names appear above.

/s/ ALLEN POMEROY

State of California,  
County of Los Angeles—ss.

On this 24th day of February, 1950, before me, personally appeared Allen Pomeroy, to me known and known to me to be the person described in and who executed the foregoing certificate and acknowledged that he executed the same.

/s/ AUGUSTA I. WEISBERG,

Notary Public in and for said County and State.

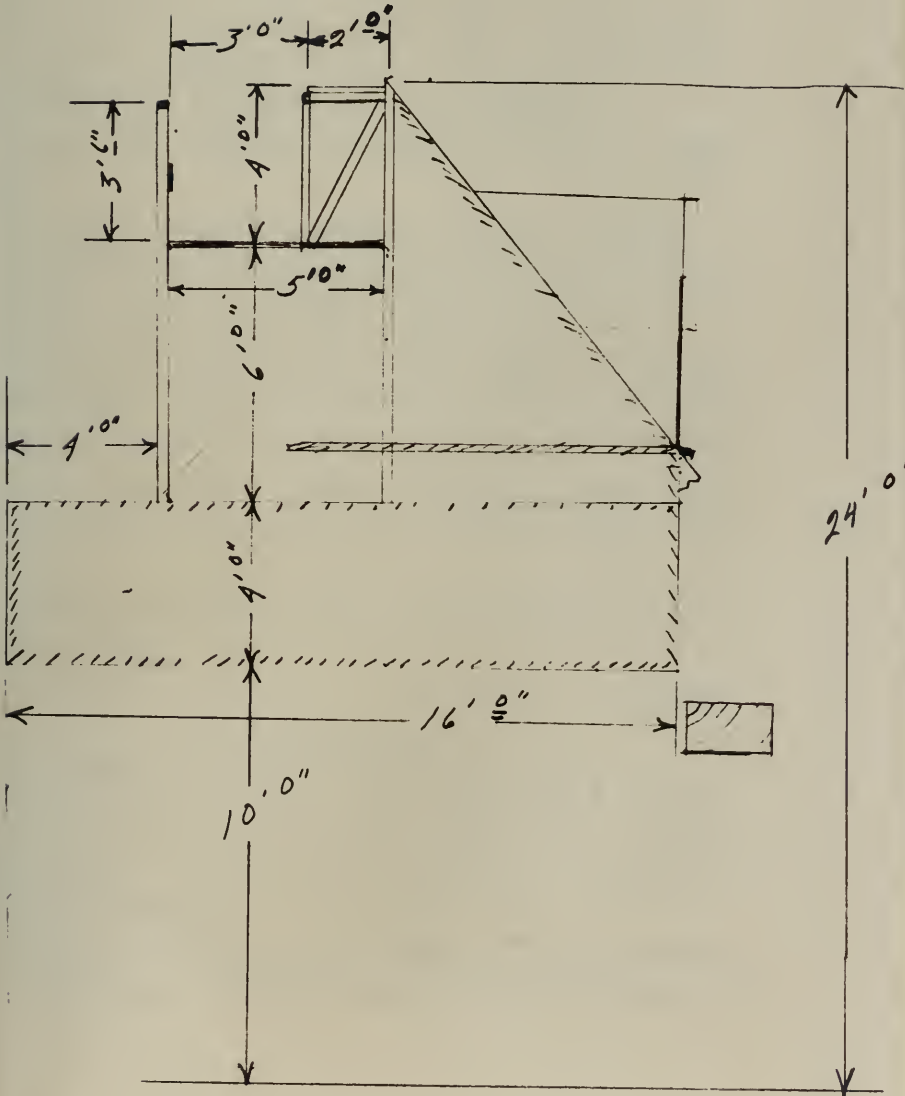
My commission expires July 29, 1951.

[Endorsed]: Filed July 22, 1953.





No. 12479-60
Garrison
vs.
Wagner Bros
Depts EXHIBIT
No. a
File JUL 22 1953 19
EDMUND L. SMITH, Clerk
By <i>Mosman</i> Deputy Clerk





DEFENDANTS' EXHIBIT "B"

Original Script from Studio

PATHE NEWS

Dope sheet from Cameraman: Vander Veer.  
Silent.

Subject: The producers of "The Flame and the Arrow" offer a reward of one million dollars to anyone who can prove that Burt Lancaster did not himself perform all the stunts attested to by the stunt men who worked in the picture.

Place: Los Angeles, California. Date: 11 July 1950.

Who else covered: Exclusive. Studio publicity.

Continuity is self-explanatory in rough-cut print; however, copy of shooting script is enclosed.

Burt Lancaster is counting one million dollars in closed vault. Counts to one million, taking last dollar from his pocket. Attendant opens door for three women reporters to enter. They interview Lancaster relative to offer of one million dollars (as above).

Sending rough-cut print and complete negative.  
900 ft. Neg.

7/11/50

NEWSREEL

Close Shot. A Pile of Money. (Moving Camera).

It is piled on the floor of a bank vault. Camera Pulls Back to reveal Burt Lancaster counting it, dollar by dollar.

Narrator's Voice (over above): The producers of "The Flame and the Arrow" offer a reward of

## Defendants' Exhibit "B"—(Continued)

one million dollars to anyone who can prove that Burt Lancaster did not himself perform all the stunts attested to by the stunt men who worked in the picture.

Lancaster has reached the last of the huge pile of bills.

Burt: 999,998; 999,999—one million! (he wipes his brow) I had to count it three times to make sure.

Int. Bank Vault. Another Angle. As three girls enter—Kendis Rochlen, Maralyn Marsh, and Ann Helming:

Kendis: Mr. Lancaster, I'm Kendis Rochlen of the Los Angeles Mirror. Is this on the level?

Burt: It's so much on the level, I'm trying to figure out a way to win it myself.

Maralyn: Burt, I'm Maralyn Marsh of International News Service. I just saw "The Flame and the Arrow"—and you can't make me believe that was you doing those somersaults from six horizontal bars, fifty feet in the air!

Burt: Look, before I got lucky in Hollywood I made my living in a circus. I used to do that stuff for coffee and doughnuts.

Maralyn: What happened if you missed?

Burt (shrugging): Somebody got an extra doughnut.

Ann: Mr. Lancaster, I'm Ann Helming of The Hollywood Citizen News. It's hard to believe the producers want to give away a million dollars.

Burt: They really don't want to give it away.

Defendants' Exhibit "B"—(Continued)

But it's a bona fide offer. So if anybody wants it, they're going to have to fight for every dollar!

Ann: What if somebody proves it wasn't you, walking across a pole thirty-five feet in the air?

Burt: They'd get the million—and I'd go back to coffee and doughnuts.

Kendis (to the others): Come on, girls—let's run "The Flame and the Arrow" again!

[Endorsed]: Marked for Identification July 23, 1953.

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DEFENDANTS' EXHIBIT "C"

WARNER PATHE NEWS

Used in Toto in L. A.

Series 1949-1950

From issue No. 97 Los Angeles Local.

Film Producers Offer a Million Dollar Reward.

Camera: Vanderveer. Voice: Andre Baruch.

In Hollywood, Burt Lancaster counts the one million dollar reward offered by Warner Bros. to anyone who can prove that Burt himself didn't perform his daring stunts in "The Flame and the Arrow."

Burt Lancaster: "999,998; 999,999—one million dollars! I had to count it three times to make sure."

Girls: "Here he is, ladies."

Kendis: "Hello, Burt, I'm Kendis Rochlan of

Defendants' Exhibit "C"—(Continued)  
the Los Angeles Mirror. Tell me, is this really on the level?"

Burt Lancaster: "Really on the level? Well, so much so I'm trying to figure out how to win it myself."

Maralyn: "Burt, I'm Maralyn Marsh of International News Service."

Burt Lancaster: "How do you do, Ma'm."

Maralyn: "I just saw you in "The Flame and The Arrow."

Burt Lancaster: "You did?"

Maralyn: "Now, look, you can't make me believe that was you doing those somersaults from, what was it, six horizontal bars, fifty feet in the air!"

Burt Lancaster: "Sixty feet in the air. Well, why not? Before I got lucky in Hollywood I used to make my living in a circus. Why, I did stuff like that for coffee and doughnuts."

Maralyn: "What happened if you missed?"

Burt Lancaster: "Somebody got an extra doughnut."

Ann: "Burt, I'm Ann Helning of the Hollywood Citizen News."

Burt Lancaster: "Well, hello."

Ann: "It's hard to believe the producers want to give away a million dollars."

Burt Lancaster: "Well, Ann, they really don't want to give it away if they can help it. But this is a genuine bona fide offer."

Ann: "What if somebody proves it wasn't you walking across a pole thirty-five feet in the air?"

Defendants' Exhibit "C"—(Continued)

Burt Lancaster: Well, if anybody can prove that they'll get the million. And I'll go back to coffee and doughnuts. Satisfied?"

Kendis: "Well, sounds good enough for me. Come on, girls, let's take a look at "The Flame and The Arrow" again."

[Endorsed]: Filed July 23, 1953.

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[Endorsed]: No. 14316. United States Court of Appeals for the Ninth Circuit. Jules Garrison, Appellant, vs. Warner Brothers Pictures, Inc., a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: April 19, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 14316

JULES GARRISON,

Plaintiff and Appellant,

vs.

WARNER BROTHERS PICTURES, INC., a  
corporation, et al.,

Defendants and Appellees.

POINTS UPON WHICH APPELLANT IN-  
TENDS TO RELY ON APPEAL

The appellant assigns the following as Points on which he intends to rely on appeal:

I.

The findings and conclusions of law and each of them are contrary to the law and the evidence.

II.

The decision and judgment of the United States District Court are contrary to the law and the evidence. An offer of reward was made and published throughout the nation, and accepted by the plaintiff. The plaintiff is entitled to the reward thus offered.

III.

The District Court erred in deciding and finding that, although an offer had been made by Warner Brothers Pictures, Inc. and in connection therewith an offer of \$1,000,000.00 reward was offered



if it could be proved that the star in the picture did not perform all the stunts therein shown, the plaintiff was not entitled to the reward because it had been withdrawn prior to the acceptance thereof.

#### IV.

The District Court erred in finding that an offer of reward made publicly through the medium of motion pictures can be withdrawn in any manner and in any way other than in the same manner in which the offer was made. The evidence is that there was no such withdrawal.

#### V.

The District Court erred in deciding and finding that the acts of the hero in the picture (Burt Lancaster) which were not performed by him were not "stunts" within the meaning of the offer of reward.

#### VI.

The District Court erred in failing to make specific findings in accordance with the admitted and undisputed evidence, as follows:

(a) That the defendant Warner Brothers Pictures, Inc., a corporation, together with Norma Productions, Inc., a corporation, made the motion picture of "The Flame and the Arrow" under a contract, and after this motion picture was made it was distributed by Warner Brothers Pictures, Inc.

(b) That the defendant Warner Brothers Pictures, Inc., made a Newsreel offer, as part of its publicity campaign to distribute and sell the motion picture "The Flame and the Arrow", in which it offered a reward to the public generally, including the plaintiff, of \$1,000,000.00 to anyone who could prove that Burt Lancaster did not do or perform all of the stunts he was shown doing in the new picture "The Flame and the Arrow."

(c) The District Court erred in failing to find that in the Newsreel offer of reward to the public generally, there were scenes taken in a bank vault in which Burt Lancaster and three newspaper reporters were shown in the presence of stacks of money, represented to be \$1,000,000.00 in cash, and this newsreel had the following dialogue:

"In Hollywood, Burt Lancaster counts the One Million Dollar Reward offered by Warner Brothers to anyone who can prove that Burt Lancaster, himself, didn't perform his daring stunts in 'The Flame and the Arrow'."

(d) The District Court failed to find the undisputed fact that at about the time of the showing of the newsreel set out in the foregoing assignment, a news item appeared in the Los Angeles Daily Mirror, a newspaper of general circulation in Los Angeles County, which news item was based upon a press release issued by Warner Brothers Pictures, Inc. and was authorized, showing a picture of Burt Lancaster and the newspaper reporter, Kendis Rochlen, underneath which picture it was stated:

“\$1,000,000 if you can prove Burt didn’t do it.

“Things cannot be so bad in the movie business. Warner Brothers offered to give away \$1,000,000 today. It is waiting in cash for anyone who can prove Burt Lancaster did not do all the stunts he is shown doing in a new picture. In “The Flame and The Arrow”, apparently no drawing room drama, Lancaster performs somersaults from the horizontal bars, walks across a pole 35 feet above ground, and scales walls like a window washer gone beserk.”

This this publication was made pursuant to press releases of Warner Brother Pictures, Inc. and never repudiated or withdrawn by them.

(e) That the District Court Erred in failing to find that the defendant Warner Brothers Pictures, Inc. did not repudiate or disavow or withdraw the same publication or announcement, nor its newsreel offer at the time the plaintiff accepted the same, nor did it ever publicly repudiate or withdraw the offer. That it was accepted by the plaintiff and proof offered by him, which was rejected by the defendant.

## VII.

The District Court erred in finding, contrary to the evidence, that the plaintiff failed to accept the offer and failed to notify defendant Warner Brothers Pictures, Inc. and its attorneys of said acceptance, and failed to notify them of the facts constituting the acceptance.

## VIII.

The District Court erred in Finding of Fact X that the activities therein described, performed by Don Turner, a Hollywood stunt man, for Burt Lancaster, did not constitute stunts. This is clearly against the weight of the evidence, and the further finding that said stunts were not daring or dangerous is against the weight of the evidence.

## IX.

Errors of law occurred at the trial, namely:

(A) The ruling in substance by the Court that acts done by agent corporations of defendant were not done by defendant.

(B) The interpretation of the offer in a strained and unnatural manner against plaintiff, when the offer was prepared by defendant, and the plain, reasonable meaning as contended for by plaintiff would give it life. The construction urged by the defendant and adopted by the court was one in favor of the defendant and against the plaintiff and made it meaningless and a trick and snare.

## X.

The violation of Rule 33 of the Federal Rules of Civil Procedure by defendant in giving false answers under oath to Interrogatories submitted to said defendant, namely to Interrogatories No. 10 and No. 11.

## XI.

The violation of Rule 36 of the Federal Rules of Civil Procedure by defendant in giving false an-

swers to Request for Admissions, namely to Request No. 3.

XII.

The District Court erred in failing to grant plaintiff's motion for attorneys fees and expenses under Rule 37(c), which is designed to enforce the provisions of Rule 36. The rule is mandatory that a judge shall allow a reasonable fee to attorneys bringing the suit, where the defendant fails to respond fully and truthfully to request for admissions.

XIII.

The District Court erred in failing to grant plaintiff's attorneys reasonable compensation for 250 additional hours of time spent and \$600.00 expense incurred by reason of the failure of the defendants to make admission and thus "to expedite the trial and relieve parties of the costs and labor of proving facts which would not be in dispute on the trial and the truth of which could be ascertained by reasonable inquiry.

Respectfully submitted,

/s/ MORRIS LAVINE,  
Attorney for Plaintiff and  
Appellant

The appellant designates the entire record and all exhibits as his record on appeal.

/s/ MORRIS LAVINE

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 18, 1954. Paul P O'Brien,  
Clerk.

